

T H E CX
C L E R K ' S
English Tutor.

Shewing the PRACTICE of the
Courts of King's Bench
A N D
Common Pleas,

As they are now settled, pursuant to the several late Acts of Parliament, and the respective RULES of both the Courts made consonant thereto.

W I T H
Great Variety of curious *English* PRECEDENTS of DECLARATIONS and PLEADINGS (never before Printed in any Language) drawn by the most Eminent Counsel of the present Age.

And done into *English* conformable to the Statute of 4 Geo. 2. c. 26. That all Proceedings in the Courts of Justice shall be in the *English* Language; together with such Writs, or Process, as well mesne as judicial, as are generally used in every Day's Practice.

O *By an Attorney at Law.*

V O L. II.

In the SAVOY: Printed by E. and R. NUTT, and R. GOSLING, (Assigns of *Edward Sayer, Esq;*) for W. Meadows, at the Angel in Cornhill. MDCCXXXIII.

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Commonwealth of Massachusetts
County of Suffolk
City of Boston
In Superior Court of the said County of Suffolk
at the Court Room of the said County of Suffolk
this 1st day of January 1901
Before me, the undersigned authority, on the within and foregoing Petition of the said
Commonwealth of Massachusetts, do hereby certify that the within and foregoing
Petition is true and correct, and that the same is a true and correct copy of the
original thereof, as the same appears from the records of the said Court.

Rec. May 21, 1903.

in every case.

As well as the other things which are
gathered together with the things of power,
Counsel, Justice shall be in the way of it.
Of this we have seen many examples in
and done into English country, and so forth.

The first thing which I have seen
of this kind of thing, and so forth.

And here is the end of the world.

W. L. T.

Given Under the Great Seal of the United States

of the President of the United States (as)

verbal, printed in my language) drawn by

the Court of the United States, and so forth.

[illegible]

(i)

THE
PREFACE
TO THE
READER.



*HIS the Second
Volume of the en-
suing Treatise,
which is now of-
fered to the Publick, com-
pleats the whole of the Au-
thor's Intention, namely to in-
struct the Clerk and young
Practiser,*

Practiser, from the Beginning to the End of a Law-Suit, as well in the Court of King's Bench, as in the Court of Common Pleas; and this being performed in a general Way, some Matters more special (which may or may not intervene) are treated of, to wit, great Variety of special Pleas, Replications, and other Pleadings, and likewise some Forms of special Writs, and other Process (now first published from my own Manuscripts) with the Manner of entering of such Writs on the Roll; of acknowledging Satisfaction on Record, and inrolling of Deeds. Where-
to

to are added, some new with some old Orders or Rules of Court, not to be forgot, being of general Use, and necessary to be known by all who intend to practice the Law; to which End they are here collected.

In many antient Deeds and Concords, the Year of the King's Reign is only mentioned, and the Year of our Lord, peradventure, may be wanted to be known, to which Purpose you have here a Table of the Years of all the King and Queen's Reign, from William the Conqueror to this the present Time, to wit, the Sixth Year of his

P R E F A C E.

his present Majesty King George the Second, quadrating with the Year of our Lord, whereby at one View, such Want may be immediately supplied.

The Whole of this Performance (which, as before mentioned, was only as a long Vacation Exercise) is done in a plain Way, and adapted to the meanest Capacity, according to the aforesaid Original Design, of instructing and inuring the young Clerk or Practiser to Business; and yet, in some Things, may not prove unworthy the perusal of the more Expert.

T H E

T H E

C L E R K's

English TUTOR.

Of Debt.

In the Common Pleas.

*Easter Term, in the fifth Year of King
George the Second.*

Cooke.

SUSSEX, to wit, *Samuel B*, late (1)
of *Horsham*, in the County afore- A Declaration
in Debt on a
(Mutuatus) Bor-
said, Yeoman, was summoned to answer rowing, com-
monly used to
confess a Judg-
ment upon a
Warrant of At-
torney without
a Bond.
to *Robert L*, of a Plea that he render to
him forty and six Pounds, which he
owes to him, and unjustly detains: And
whereupon the same *Robert* by *John*
H. his Attorney says, That whereas
the aforesaid *Samuel*, on the twenty
fifth day of *March*, in the fifth Year
of the Reign of our Lord the now
King, at *Lewes* in the County afore-
VOL. II. B said,

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faid, had borrowed of the same *Robert*, the aforefaid forty and six Pounds, to be paid to the same *Robert*, when he should be thereunto required; yet the aforefaid *Samuel*, although oftentimes thereunto required, hath not paid the aforefaid forty and six Pounds to the same *Robert*, but hath hitherto entirely denied, and yet doth deny to pay that to him; whereupon he says that he is worsted, and hath Damage to the Value of ten Pounds; and thereupon he brings his Suit.

Borret.

(2) *Sussex*, to wit. *Samuel B.* late of
Upon a Bond. *Horsbam* in the County aforefaid, Yeoman, otherwise called *Samuel B.* of *Horsbam* in the County of *Sussex*, Yeoman, was summoned to answer to *Robert L.* of a Plea that he render to him forty and six Pounds, which he owes to him, and unjustly detains; and whereupon the same *Robert* by *J. H.* his Attorney says, that whereas the aforefaid *Samuel* on the twenty fifth Day of *March*, in the fifth Year of the Reign of our Lord the now King, at *Lewes* in the County aforefaid, by his certain Writing obligatory, had granted himself to be bound to the same *Robert* in
the

the aforesaid forty and six Pounds, to be paid to the same *Robert*, when he should be thereunto required. Yet the aforesaid *Samuel*, although oftentimes thereunto required, hath not rendered the aforesaid forty and six Pounds to the same *Robert*, but hath hitherto entirely denied, and yet doth deny to render that to him: Whereupon he says that he is worsted, and hath damage to the value of ten Pounds, and thereupon he brings his Suit: And he brings here into Court the Writing aforesaid, which testifies the Debt aforesaid in Form aforesaid, the Date whereof is the Day and Year abovesaid.

Note, That the Common-Pleas usually add the (*Li. Lo.* that is, *Licentia Loquendi*, or) Imparlance, and the Condition to these Declarations upon Bonds, in this manner:

And the aforesaid *Samuel* by *W. B.* his Attorney comes, and defends himself against the Force and Injury, when, where, and in such manner as this Court shall award; and prays Oyer of the Writing aforesaid, and it is read to him; he also prays Oyer of the Condition of the same Writing, and it is read to him in these Words, *The Condition of this Obligation.*—(and so, on reciting the whole

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Condition to the End) which being read and heard, the same *Samuel* prays leave to imparl thereon here, untill the morrow of the Holy Trinity, and he hath it; the same Day is given to the above-named *Robert* here, (*i. e.* at the same Place.)

Thompson.

(3) *Sussex*, to wit, *Anne L.* late of —
By an Attorney, otherwise named A. L. was attached by
upon a Bond. Writ of our Lord the King of Privilege, issuing out of the Court here to answer to *H. W.* Gentleman, one of the Attornies of our Lord the King of the Bench here, according to the Liberties and Privileges of the same Court for such Attornies, and other Ministers of the same Bench used and approved in the same from time beyond the memory of man, of a Plea of Debt; and whereupon the same *H.* in his own proper Person says, that the aforesaid *Anne* hath not rendered to the same *H.* twenty Pound which she owes to him, and unjustly detains, for that to wit, that whereas the aforesaid *Anne* on the tenth Day of *May*, in the fourth Year of the Reign of our Lord the now King; — and so on, as in the next above to the End.

And

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And the aforefaid *Anne* by *W. B.* her Attorney comes, and prays Oyer of the Writ aforefaid; and it is read to her in thefe words, *GEORGE the Second by the Grace of God of Great Britain*, — (and fo recite the whole attachment) which being read and heard, the fame *Anne* faving to herfelf all and all manner of advantage, and Exception as well to the Writ as to the Declaration aforefaid, prays leave to imparle thereon here until *Friday* next after the morrow of the Holy Trinity, and ſhe hath it: The fame Day is given to the above-named *H.* here.

*To the Juſtices of our Lord the King
of the Bench.*

Middleſex, to wit. *J. B.* Efquire (4)
by *R. O.* his Attorney, complains of *R. H.* Gentleman, one of the Attornies of the Court of our Lord the King of the Bench here being preſent in Court in his own proper Perſon, otherwiſe called *R. H.* of — Gentleman, of that —, that he hath not rendered to the ſame *J.* eighty Pounds, which he owes to him, and unjuſtly detains; for that, to wit, that whereas the aforeſaid *R.* on the tenth Day of *July*, in the fifth Year of the Reign of our Lord

*Againſt an At-
torney, upon a
Bond.*

B.3

the

The Clerk's

the now King, at *Westminster*, by his certain Writing Obligatory — (and so on as above) : Whereupon he says that he is worsted, and hath Damage to the Value of twenty Pounds, and thereof he prays Remedy. And he brings here into Court the Writing aforesaid, which testifies the Debt aforesaid in Form aforesaid, the Date whereof is the Day and Year aforesaid.

} *John Doe,*
Pledges of prosecuting, } and
 } *Richard Roe.*

(5)
Upon a Penal
Bill.

Suffex, to wit. *T. T.* late of —, otherwise called *T. T.* — was summoned to answer to *H. S.* of a Plea that he render to him one hundred Pounds, which he owes to him, and unjustly detains : And whereupon the same *H.* by *R. O.* his Attorney saith, that whereas the aforesaid *T.* on the tenth Day of *September*, in the fourth Year of the Reign of our Lord the now King, at *Lewes*, by his certain Bill Obligatory, which the same *H.* brings here into Court sealed with the Seal of the aforesaid *T.* the Date whereof is the same Day and Year, had acknowledged himself to owe and be indebted to the same *H.* in the full Sum of fifty Pounds of good and lawful Money of *Great-Britain*,

Britain, to be paid to the same *H.* his Executors, Administrators, or Assigns, at or upon the tenth Day of *October* next ensuing the Date of the said Bill; for which Payment well and truly to be made, the aforesaid *T.* had bound himself, his Heirs, Executors, and Administrators, and every of them, in one hundred Pounds of lawful Money of *Great Britain*, firmly by the same Bill, as by the same Bill may more fully appear. And the same *H.* in fact says, that the aforesaid *T.* hath not paid the above-named *H.* the aforesaid fifty Pounds, at or upon the aforesaid tenth Day of *October* then next ensuing the Date of the said Bill, which he ought to have paid to him at or upon the same Day, according to the Form and Effect of the Bill Obligatory aforesaid; whereby an Action hath accrued to the same *H.* to demand and have of the above-named *T.* the aforesaid one hundred Pounds: Yet the aforesaid *T.* although often thereto required, — *as before to the End.*

Sussex, to wit. *T. T.* late of —, (6)
 otherwise called —, was summoned
 to answer to *H. S.* of a Plea that he
 render to him one hundred Pounds,
 which he owes to him, and unjustly
 detains;

Upon a Penal Bill, where one mentioned in the Bill was dead.

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detains ; and whereupon the same *H.* by *R.O.* his Attorney saith, that whereas the aforesaid *T.* and one *J. T.* now deceased, whom the same *T.* survived, on the second Day of *August*, in the Year of our Lord One thousand seven hundred and thirty, at *Lewes*, by their certain Bill Obligatory, which the same *H.* brings here into Court, sealed with the Seals of the aforesaid *T.* and *J.* the Date whereof is the same Day and Year, had acknowledged themselves to owe, and stand justly indebted to the same *H.S.* of *M.* in the said County of *S.* Yeoman, in the Sum of fifty Pounds of lawful Money of *Great Britain*, to be paid to the same *H.* or his certain Attorney, his Heirs, Executors, Administrators, or Assigns, at or upon the twentieth Day of *December* next ensuing the Date of the said Bill, at or in the then Mansion-House of the said *H.S.* in *M.* aforesaid : In witness of which Bill, the said *T.* and *J.* bound themselves, their Heirs, Executors, and Administrators, firmly by the same Bill, in the penal Sum of one hundred Pounds of like lawful Money to be paid to the same *H.* as by the same Bill may more fully appear. And the same *H.* in fact says, that the aforesaid *T.* and *J.* or either of them in the Life of him the
said

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saïd *J.* or the aforesaid *T.* after the Death of him the saïd *J.* have not paid the above-named *H.* the aforesaid one hundred Pounds at or upon the aforesaid twentieth Day of *December* then next ensuing the Date of the saïd Bill, at or in the then Mansion-House of the saïd *H. S.* in *M.* aforesaid; which they ought to have paid to him at or upon the same day, according to the Form and Effect of the saïd Bill; whereby an Action hath accrued to the same *H.* to demand and have of the above-named *T.* the aforesaid one hundred Pounds: Yet the aforesaid *T.* — *as above to the End.*

Suffex, to wit. *T. T.* late of —, (7)
otherwise called —, was summoned *Upon a Bill*
to answer to *H. S.* of a Plea that he *without a Date.*
render to him one hundred Pounds,
which he owes to him, and unjustly de-
tains; and whereupon the same *H.* by
R. O. his Attorney says, that whereas
the aforesaid *T.* on the tenth Day of
July, in the Year of our Lord One
thousand seven hundred and thirty, at
Lewes, by his Bill without Date, and
as the Deed of the same *T.* on the same
Day and Year, at *Lewes* aforesaid, to
the above-named *H.* delivered, and
brought here into Court sealed with the
Seal of the aforesaid *T.* had acknow-
ledged

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ledged himself to owe and be indebted.
— and so on, as in N^o 5. to the End.

(8) *London*, to wit. *J. R.* late of —, otherwise named *J. R.* of —, was
Upon a Bond, and for Money borrowed. summoned to answer to *T. W.* of a Plea that he render to him twenty Pounds, which he owes to him, and unjustly detains; and whereupon the same *T.* by *T. A.* his Attorney says, that whereas the aforesaid *J.* on the twentieth Day of *July*, in the fourth Year of the Reign of our Lord the now King, at *London* aforesaid, to wit, in the Parish of Saint *Mary of the Arches*, in the Ward of *Cheap*, by his certain Writing Obligatory, had granted himself to be bound to the above-named *T. W.* in sixteen Pounds, part of the aforesaid twenty Pounds to be paid to the same *T. W.* when he should be thereunto required; and also that whereas the aforesaid *J.* afterwards, to wit, on the first Day of *September*, in the fourth Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, had borrowed of the same *T. W.* eighty Shillings, the remainder of the aforesaid twenty Pounds, to be paid to the same *T. W.* when in like manner he should be there-to required: Yet the aforesaid *J.* although oftentimes required, hath not rendered

rendered the aforesaid twenty Pounds to the same *T. W.* but hath hitherto denyed, and still doth deny to render that to him; whereupon he says that he is worsted, and hath damage to the value of ten Pounds, and thereupon he brings his suit: And he brings here into Court the Writing aforesaid, which testifies the Debt aforesaid of sixteen Pounds in Form aforesaid; the Date whereof is the twentieth Day of *July*, in the fourth Year abovesaid.

Middlesex, to wit. *R. T.* late of (9)
 —, the Son and Heir of *E. T.* lately called *E. T.* of —, was summoned to answer to *T. B.* and *A.* his Wife, lately called *A. S.* of a Plea that he render to them one hundred Pounds, which he owes to them, and unjustly detains: and whereupon the same *T.* and *A.* by *J. N.* their Attorney say, that whereas the aforesaid *E. T.* (the Father of the aforesaid *R.* whose Heir he is) in his life-time, to wit, on the tenth Day of *July*, in the Year of our Lord One thousand seven hundred and thirty, at *Westminster*, by his certain Writing Obligatory, had granted himself to be bound to the same *A.* while she was sole in the aforesaid one hundred Pounds, to be paid to the same *A.* when he should be thereunto required: And for the

Upon a Bond to the Wife, while she was sole, and sued after Marriage against an Heir.

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the same Payment well and faithfully to be made, the aforesaid *E.* had bound himself and his Heirs by the same Writing. Yet the aforesaid *E.* in his Lifetime, and the above-named *R.* the Son and Heir of him the said *E.* after the death of him the said *E.* although oftentimes required, have not paid the aforesaid one hundred Pounds to the same *A.* while she was sole, or to the same *T.* and *A.* after the marriage celebrated between them; but have hitherto denied to pay that to them, and the aforesaid *R.* yet denies to pay that to them the said *T.* and *A.* Whereupon they say that they are worsted, and have damage to the value of twenty Pounds, and thereupon they bring their Suit: And they bring here into Court the Writing aforesaid, which testifies the Debt aforesaid in Form aforesaid, the Date whereof is the Day and Year abovesaid.

(10)
Against an
Executrix,
upon a Bond.

London, to wit. *M. M.* late of *London*, Widow, Executrix of the last Will of *A. M.* lately called *A. M.* of —, was summoned to answer to *G. N.* of a Plea that she render to him one hundred Pounds, which she unjustly detains from him; and whereupon the same *G.* by *J. E.* his Attorney saith, That whereas the above-named *A.* in his

his life-time, to wit, on the twenty fourth Day of *March*, in the Year of our Lord One thousand seven hundred and thirty, at *London* aforesaid, to wit, in the Parish of Saint *Mary of the Arches*, in the Ward of *Cheap*, by his certain Writing Obligatory, had granted himself to be bound to the same *G.* in the aforesaid one hundred Pounds, to be paid to the same *G.* when he should be thereunto required. Yet the aforesaid *A.* in his life-time, or the above-named *M.* after the death of him the said *A.* although oftentimes required, have not rendered, neither hath either of them rendered the aforesaid one hundred Pounds to the same *G.* but they have denied to render that to him; and the aforesaid *M.* yet doth deny to render that to him, and unjustly detains that from the same *G.* Whereupon he says that he is worsted, and hath Damage to the Value of one hundred Pounds, and thereupon he brings his Suit. And he brings here into Court the Writing aforesaid, which testifies the Debt aforesaid, in Form aforesaid, the Date whereof is the Day and Year aforesaid.

Middlesex, to wit. *W. W.* late of (11)
 ———, otherwise called ———, was ^{Upon a Bond by}
 summoned to answer to *E.H.* and *T.H.* ^{Executors.}
 Exe-

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Executors of the last Will of *W. H.* of a Plea that he render to them sixteen Pounds, which he unjustly detains from them; and whereupon the same *E.* and *T.* by *J. E.* their Attorney say, that whereas the aforesaid *W. W.* on the twenty fifth Day of *March*, in the fifth Year of the Reign of our Lord the now King, at *Westminster*, by his certain Writing Obligatory, had granted himself to be bound to the above-named *W. H.* in his life-time in the aforesaid sixteen Pounds, to be paid to the same *W. H.* when he should be thereunto required. Yet the aforesaid *W. W.* although oftentimes required, hath not rendered the aforesaid sixteen Pounds to the above-named *W. H.* in his life-time, or to the same *E.* and *T.* or either of them, after the Death of him the said *W. H.* but hath denied to render that to the same *W. H.* in his life-time, and still doth deny, and unjustly detains that from the same *E.* and *T.* in delay of the Execution of the last Will aforesaid, whereupon they say that they are worsted, and have Damage to the value of ten Pounds, and thereupon they bring their Suit: And they bring here into Court as well the Writing aforesaid, which testifies the Debt aforesaid, in Form aforesaid, the Date whereof is
the

the day and Year abovesaid, as also the Letters Testamentary of the abovesaid *W. H.* whereby it sufficiently appears to the Court here, that they the said *E.* and *T.* were Executors of the last Will of the abovesaid *W. H.* and that they had the Administration thereof.

Middlesex, to wit. *R. B.* late of (12)
 —, otherwise named *R. B.* of —, ^{Upon three several Bonds.}
 was summoned to answer to *J. T.* of a Plea that he render to him two hundred Pounds, which he owes to him, and unjustly detains, and whereupon the same *J.* by *J. E.* his Attorney says, that whereas the abovesaid *R.* by the Name of *R. B.* of —, on the tenth Day of *March*, in the fourth year of the Reign of our Lord the now King, at *Islington*, by his certain Writing Obligatory, had granted himself to be bound, to the same *J.* in one hundred Pounds, part of the abovesaid two hundred Pounds to be paid to the same *J.* when he should be thereunto required; and also that whereas the abovesaid *R.* by the Name of *R. B.* of —, afterwards, to wit, on the tenth Day of *September*, in the abovesaid fourth Year of the Reign of our Lord the now King, at *Islington* abovesaid, by his
 other

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other certain Writing Obligatory, had granted himself to be bound to the same *£*. in sixty Pounds, other Part of the aforesaid two hundred Pounds to be paid to the same *£*. when he should be in like manner thereunto required; and also that whereas the aforesaid *R.* by the Name of *R. B.* of —; afterwards, to wit, on the twelfth Day of *March*, in the fifth Year of the Reign of our Lord the now King, at *Islington* aforesaid, by his other certain Writing Obligatory, had granted himself to be bound to the same *£*. in forty Pounds the remainder of the aforesaid two hundred Pounds to be paid to the same *£*. when he should be likewise thereunto required. Yet the aforesaid *R.* although oftentimes required, hath not rendered the aforesaid two hundred Pounds to the same *£*. but hath hitherto denied, and yet doth deny to render that to him; whereupon he says that he is worsted, and hath Damage to the Value of one hundred Pounds; and thereupon he brings his Suit: And he brings here into Court the several Writings aforesaid, which testify the Debts aforesaid, in Form aforesaid, the Dates whereof are the several Days and Years aforesaid.

Middlesex,

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Middlesex, to wit. *R. T.* late of (13)
London, Esquire, was summoned to answer to *J. T.* of a Plea that he render to him twenty Pounds, which he owes to him, and unjustly detains. And whereupon the same *J.* by *J. E.* his Attorney says, that whereas the aforesaid *R.* on the third day of *June*, in the fifth Year of the Reign of our Lord the now King, at *Islington*, had bought of the same *J.* one Clock shewing the days of the Month, for the aforesaid twenty Pounds, to be paid to the same *J.* on the day of Marriage of the aforesaid *R.* or at the Hour of death of the same *R.* which should first happen; and the same *J.* in fact says, that the aforesaid *R.* afterwards, to wit, on the third day of *July* in the abovesaid fifth Year of the Reign of our Lord the now King, at *Islington* aforesaid, hath married One *M. A.* the Daughter of *F. A.* whereby an Action hath accrued to the same *J.* to demand and have of the above-named *R.* the aforesaid twenty Pounds: yet the aforesaid *R.* — (*as in the next above*) — and thereupon he brings his Suit:

For twenty Pounds to be paid on the day of Marriage, or at the hour of Death.

Middlesex, to wit. *W. W.* late of (14)
Westminster, in the County aforesaid, Gentleman, was summoned to answer to *A. H.* of a Plea that he render to him thirty

C

Upon a Judgment obtained in the Court of Common Pleas

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thirty two Pounds, which he owes to him, and unjustly detains : And whereupon the same *A.* by *R. H.* his Attorney saith, That whereas he formerly, to wit, in the Term of Saint *Michael*, in the fourth Year of the Reign of our Lord the now King, in the Court of our said Lord the King of the Bench, before Sir *Robert Eyre*, Knight, and his Companions, then Justices of our said Lord the King of the same Bench, here, to wit, at *Westminster*, in the County of *Middlesex*, by Consideration of the same Court had recovered against the aforesaid *W. W.* by the name of *W. W.* late of ——— otherwise called *W. W.* of — as well a certain Debt of thirty Pounds, part of the aforesaid thirty two Pounds, as also forty Shillings the Remainder of the aforesaid thirty two Pounds, which hath been adjudged to the same *A.* in the same Court of our said Lord the King, for his Damages which he had by the Occasion of detaining of that Debt, whereof he is convicted, as by the Record and Process thereof in the same Court of our said Lord the King of the Bench here, to wit, at *Westminster* aforesaid, remaining, may more plainly appear ; which said Judgment yet remains in full force and virtue, not reversed, or annulled ; and the same *A.* hath not yet
sued

sued out Execution against the above-named *W.* for his Debt and Damages aforesaid, recovered in Form aforesaid, whereby an Action hath accrued to the same *A.* to demand, and have of the above-named *W.* the aforesaid thirty two Pounds: Yet the aforesaid *W.* although he was often thereunto required, hath not rendered the aforesaid thirty two Pounds, or any Part thereof, to the same *A.* but hath hitherto entirely denied, and still doth deny to render that to him, to the Damage of him the said *A.* of forty Pounds; and thereupon he brings his Suit.

Kent, to wit. *R. B.* late of ——— (15)
 was summoned to answer to *J. B.* of a Upon a Judgment obtained in a Court Baron,
 Plea that he render to him forty eight Shillings, which he owes to him, and unjustly detains; and whereupon the same *J.* by *J. E.* his Attorney saith, That whereas the same *J.* in the Court Baron, and hundred of *Middleton*, held at *Middleton* in the County aforesaid, on the tenth day of *July*, in the fourth Year of the Reign of our Lord the now King, before *H. D.* Esquire, Steward of the same Court, and before *J. I.* and *R. G.* and other free Suitors of the same Court, and by Judgment of the same Court hath recovered a-
 C 2 gainst

The Clerk's

gainst the above-named R. forty eight Shillings for his Damages, which he hath sustained, as well by the Occasion of a certain Trespass upon the Case lately brought against the same J. by the above-named R. as for his Costs and Charges by him in that particular expended about that Suit, whereof he is convicted. — Yet the aforesaid R. —
as in the next above to the End.

(16) *Upon a Judgment obtained in the Court of King's Bench.* Middlesex, to wit. W. R. late of London, Gentleman, was summoned to answer to A. H. of a Plea that he render to him twenty Pounds, of lawful Money of Great Britain, which he owes to him, and unjustly detains. And whereupon the same A. H. by T. H. his Attorney, says, That whereas the aforesaid A. H. lately in the Court of our said Lord the King, to wit, in the Term of Saint Michael, in the second Year of the Reign of our said Lord the now King, before the King himself, at Westminster, in the County of Middlesex, (the same Court then being at Westminster in the said County of Middlesex) by Consideration of the same Court, hath recovered against the same J. R. twenty Pounds, which hath been adjudged to the same A. for his Damages which he hath sustained,
 as

as well by the Occasion of a certain
Trespafs upon the Cafe lately brought
against the same *J.* by the above-named
A. as for his Costs and Charges by
him in that particular expended about
that Suit, whereof he is convicted as by
the Record and Process thereof remain-
ing in the same Court of our Lord the
King, before the King himself, may
more plainly appear; which said Judg-
ment yet remains in full Force and
Power, and effect not revoked, annul-
led or satisfied. And the same *A.* hath
not yet sued out Execution upon the
said Judgment, whereby an Action
hath acerued to the same *A.* to demand
and have of the same *J.* the aforesaid
twenty Pounds. Yet the aforesaid *J.*
— as above to the End.

Suffex, to wit. *T. C.* late of *Lewes* (17)
in the County aforesaid, Yeoman, was For Rent upon
two several
Leases Parol.
summoned to answer to *J. T. Widow*,
of a Plea that he render to her twenty
nine Pounds, which he owes to her,
and unjustly detains. And whereupon
the same *J.* by *J. E.* her Attorney,
saith, That whereas the aforesaid *J.* on
the first day of *April* in the Year of our
Lord One thousand seven hundred and
twenty six, at *Lewes* aforesaid, had de-
mised to the above-named *T. C.* one
C 3 Messuage,

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Messuage, one Barn, and six Acres of Land, with the Appurtenances in *Lewes* aforesaid, to have and to hold to the same *T. C.* and his Assigns, from the Feast of the Annunciation of the Blessed Virgin *Mary*, then last past, until the full End and Term of one whole Year from thence next ensuing, and fully to be compleat and ended; and so from Year to Year, so long as both Parties should please, yielding and paying therefore Yearly, so long as the aforesaid *T. C.* should hold and enjoy the Tenements aforesaid, with the Appurtenances to the same *J.* and her Assigns, six Pounds at the Feast of Saint *Michael* the Arch-Angel, and the Annunciation of the Blessed Virgin *Mary*, by equal Portions. By virtue of which Demise the aforesaid *T. C.* entered into the Tenements aforesaid, with the Appurtenances, and held and enjoyed the same Tenements with the Appurtenances for four whole Years from thence next ensuing; and twenty four Pounds, part of the aforesaid twenty nine Pounds was in Arrearage, and yet is unpaid to the same *J.* for the Rent aforesaid, for four whole Years ending at the Feast of the Annunciation of the Blessed Virgin *Mary*, in the Year of our Lord One thousand seven hundred and thirty. And also
whereas

whereas the aforesaid *J.* afterwards, to wit, on the twenty sixth day of *March*, in the Year of our Lord One thousand seven hundred and thirty aforesaid, at *Lewes* aforesaid, had demised to the above-named *T. C.* one other Messuage, with the Appurtenances in *Lewes* aforesaid, to have and to hold unto the same *T. C.* and his Assigns, from the Feast of the Annunciation of the Blessed Virgin *Mary* then last past, unto the End and Term of one whole Year, from thence next ensuing, and fully to be compleat and ended; yielding and paying therefore to the same *J.* and her Assigns, five Pounds at the Feast of Saint *Michael* the Arch-Angel, and the Annunciation of the blessed Virgin *Mary* then next ensuing, by equal Portions; by virtue of which Demise the aforesaid *T. C.* entered into the said last mentioned Tenements with their Appurtenances, and held and enjoyed the same Tenements with their Appurtenances, for one whole Year from thence next ensuing; and five Pounds, the Remainder of the aforesaid twenty nine Pounds was in Arrearage, and yet is unpaid to the same *J.* for the said last mentioned Rent, for the aforesaid one Year, ending at the Feast of the Annunciation of the blessed Virgin *Mary*,

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ry, in the Year of our Lord One thousand seven hundred and thirty one, whereby an Action hath accrued to the same *J.* to demand, and have of the above-named *T. C.* the aforesaid twenty nine Pounds: Yet the aforesaid *T. C.* although oftentimes required, hath not rendered the aforesaid twenty nine Pounds to the same *J.* but hath hitherto denied, and yet doth deny, to render that to her; whereupon she says that she is worsted, and hath damage to the value of thirty Pounds, and thereupon she brings her Suit.

Foley.

(18) *Middlesex*, to wit. *John A.* late of the Parish of Saint *John* at *Wapping*, in the County aforesaid, Gentleman, and *Mary* his Wife, Assignee of *Samuel L.* were summoned to answer to *Abel B.* Esquire, and *Joseph H.* Gentleman, of a Plea that they render to them twenty five Pounds, and ten Shillings of lawful Money of this Realm, which they owe to them, and unjustly detain; and whereupon the same *Abel*, and *Joseph* by *J. H.* their Attorney say, that whereas the same *Abel* and *Joseph*, by their certain Indenture made on the first Day of *December*, in the third Year of

*For Rent upon
an Indenture
against an As-
signee, where
the Defendant
married.*

of the Reign of our Sovereign Lord *William* and Lady *Mary*, late King and Queen of *England*, at the Parish of *Saint John Wapping*, in the County of *Middlesex* aforesaid, between one *Dorothy E.* and them the said *Abel* and *Joseph*, by the names of *Dorothy E.* the Wife of *John E.* of *Enborne* in the County of *Berks*, Gentleman; *Abel B.* of the Inner Temple, *London*, Esquire, and *Joseph H.* of *Saint Katherine's* near the *Tower London*, Gentleman, of the one part; and the said *Samuel*, by the name of *Samuel L.* of *Wapping*, in the County of *Middlesex*, Block-maker, of the other part; the other part of which said Indenture sealed with the Seal of the said *Samuel*, the said *Abel* and *Joseph* bring here into Court, the Date whereof is the same Day and Year had demised, set, and to farm let; and by the same Indenture did demise, set, and to farm let, to the said *Samuel L.* all that Ground, Soil, and Timber Wharf, and Messuage or Tenement thereupon or upon any part thereof, lately erected or built, situate, lying and being upon the South part of *Wapping Street*, then before in the Possession of the aforesaid *Dorothy*, abutting East upon a certain Messuage or Yard, then or then before of one *John T.* and one *Henry W.* or their

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their under Tenants or Assigns; West upon a certain Wood-Yard, then or then before in the Occupation of one *Francis B.* North upon a certain Street called *Wapping Street*; and South upon the River *Thames*; containing in Front from East to West, nigh the said Street called *Wapping Street* aforesaid, fifty five Feet of Assize, little more or less; and near the said River *Thames*, sixty seven Feet of Assize, little more or less; and in depth from North to South towards the East, fifty seven Feet of Assize, little more or less; and towards the West fifty seven Feet and an half of Assize, little more or less; together with all Ways, Lights, Easements, Profits, Commodities, and Appurtenances to the said Messuage, or Tenement and Premises, by the said Indenture demised, belonging, or of right appertaining: all which said Premises then were, or then late had been in the Tenure or Occupation of the said *Samuel L.* his Executors, Administrators, or Assigns; To have and to hold to the above-named *Samuel*, his Executors, Administrators and Assigns, for and during, and unto the full End and Term of forty Years, to be accounted from the Feast of Saint *Michael* the Arch-Angel, which was in the Year of our Lord one thousand six hundred and eighty

eighty five, from thence next-ensuing, and fully to be compleat and ended; yielding and paying therefore Yearly and every Year, during the said Term of forty Years, to the same *Abel* and *Josepb*, the Yearly Rent or Sum of thirty four Pounds of lawful Money of this Realm, at the four most usual Feasts or Times in the Year, to wit, at the Feast of the Birth of our Lord Christ, the Annunciation of the blessed Virgin *Mary*, the Nativity of Saint *John* the Baptist, and Saint *Michael* the Arch-Angel, by even and equal Portions, as by the same Indenture (among other things) may more fully appear. By virtue of which said Demise, the aforesaid *Samuel L.* entered into the said demised Premises with their Appurtenances, and was in Possession thereof; and being so Possessed thereof, the same *Samuel* afterwards, to wit, on the twentieth day of *May*, in the twelfth Year of the Reign of our late Sovereign Lord *William* the third, late King of *England*, at the said Parish of Saint *John Wapping*, in the County aforesaid, made his last Will and Testament in writing, and thereby constituted and appointed the aforesaid *Mary*, Executrix of his last Will aforesaid, and afterwards there dyed, Possessed of the said demised Premises, as is before related; after whose Death the aforesaid
Mary,

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Mary, took upon herself, the burthen of the Execution of the last Will aforesaid, and in due form of Law proved the said Will, to wit, at the Parish aforesaid, in the County aforesaid; whereby the aforesaid *Mary* entered into the aforesaid demised Premises with their Appurtenances, and was possessed thereof; and being possessed thereof, the same *Mary* afterwards, to wit, on the third Day of *June*, in the second Year of the Reign of our Sovereign Lady *Anne*, now Queen of *England*, at the Parish aforesaid, in the County aforesaid, married the aforesaid *John A.* and by reason thereof the said *John* and *Mary* were and yet are possessed of the Tenements aforesaid, with their Appurtenances, as is before related to be demised: And being so possessed thereof, twenty five Pounds and ten Shillings was in Arrearage, and yet is unpaid, for the Rent aforesaid, after the Death of the said *Samuel*, and after the Marriage celebrated between the said *John* and *Mary*, for three Quarters of a Year, ending at the Feast of the Annunciation of the blessed Virgin *Mary*, in the third Year of the Reign of our said Sovereign Lady *Anne*, now Queen of *England*; whereby an Action hath accrued to the same *Abel* and *Joseph*, to demand and have

have of the abovenamed *John* and *Mary* the aforesaid twenty five Pounds and ten Shillings: Yet the aforesaid *John* and *Mary*, although oftentimes required, have not paid, neither hath either of them paid the aforesaid twenty five Pounds and ten Shillings, to the above-named *Abel* and *Joseph*, or either of them; but they have hitherto entirely denied, and yet do deny, to pay that to them, to the damage of them the said *Abel* and *Joseph*, of twenty five Pounds and ten Shillings: And thereupon they bring their Suit.

London, to wit. *W. G.* late of *London*, Esquire, late Sheriff of the County of *Kent*, was summoned to answer to *J. W.* of a Plea that he render to him thirty six Pounds, which he owes to him, and unjustly detains. And whereupon the same *J.* by *J. E.* his Attorney says, That whereas he the same *J.* by the Name of *J. W.* heretofore, to wit, in the Term of the Holy Trinity, in the fifth and sixth Years of the Reign of our Lord the now King, in the Court of our Lord the now King of the Bench, here before Sir *Robert Eyre* Knight, and his Companions, then Justices of our said Lord the King of the same Bench here, to wit, at *Westminster*, in the County of *Middlesex*, by

(19)

Against the Sheriff of Kent, for an Escape upon a Capias ad Satisfaciendum.

Conr.

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Consideration of the same Court had recovered against one *W. K.* Gentleman, by the Name of *W. K.* Gentleman, one of the Attornies of the Court of our Lord the King of the Bench, here otherwise named *W. K.* of — as well a certain Debt of thirty and four Pounds, as also forty Shillings, which hath been adjudged to the same *W. K.* in the same Court of our said Lord the King here, for his Damages which he had sustained by the Occasion of detaining of that Debt, whereof he was convicted as by the Record and Process of the same Judgment, remaining in the same Court of our said Lord the King manifestly appears. Upon which said Judgment the same *W. K.* for the sooner getting and obtaining his Debt and Damages aforesaid, afterwards, to wit, on the twenty ninth day of *July*, in the sixth Year of the Reign of our said Lord the now King, had sued out of the same Court of our said Lord the King here (the same Court then being at *Westminster* aforesaid, in the said County of *Middlesex*) a certain Writ of our said Lord the King, of *Capias ad Satisfaciendum*, against the above-named *W. K.* directed to the then Sheriff of the County of *Kent*; by which said Writ our said Lord the now King, commanded the then

then Sheriff of *Kent*, that he should take the above-named *W. K.* if he might be found in his Bailiwick, and keep him safely, so that he might have his Body before the then Justices of our said Lord the King here, to wit, at *Westminster* aforesaid, on *Monday* next, after three Weeks of Saint *Michael*, then next following, to satisfy the same *J.* for his Debt and Damages aforesaid. Whereupon as is before related, he was convicted; and that he should then have there that Writ, which said Writ, in form aforesaid, prosecuted the same *J.* afterwards and before the Return of the same, to wit, on the first day of *August*, in the sixth Year aforesaid, at *W.* in the said County of *Kent*, delivered to the aforesaid *W. G.* then Sheriff of the same County of *Kent*, in form of right to be executed: By virtue of which said Writ afterwards, and before the Return of the same, to wit, on the fourth day of *October*, in the sixth Year aforesaid, the aforesaid *W. G.* then being Sheriff of the County of *Kent* aforesaid, at *W.* aforesaid, in the aforesaid County of *Kent*, within the Bailiwick of the same Sheriff took, and arrested the above-named *W. K.* and then and there had him the said *W. K.* in Execution for the Debt and Damages
afore-

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aforesaid ; and the aforesaid *W. K.* being under the Custody of the aforesaid *W. G.* then Sheriff of the County of *Kent* aforesaid, as is before related, in Execution for his Debt and Damages aforesaid, in form aforesaid ; the aforesaid *W. G.* afterwards, to wit, on the tenth day of *October*, in the sixth Year aforesaid, at *London* aforesaid, in the Parish of Saint *Mary* of the Arches, in the Ward of *Cheap*, the aforesaid *W. G.* then being Sheriff of the County of *Kent* aforesaid, freely and voluntarily did permit, and suffered the aforesaid *W. K.* to go at large whither he pleased, and to escape out of his Custody against the Will of him the said *J.* the same *J.* not being then or yet satisfied for his Debt and Damages aforesaid ; whereby an Action hath accrued to the same *J.* to demand and have of the aforesaid *W. G.* the aforesaid thirty six Pounds. Yet the aforesaid *W. G.* although oftentimes required, hath not rendered the aforesaid thirty six Pounds to the same *J.* but hath hitherto entirely denied, and yet doth deny, to render that to him ; whereupon he says that he is worsted, and hath Damage to the value of fifty Pounds ; and thereupon he brings his Suit.

Middle-

Middlesex, to wit. *Anne B.* late of (20)
C. in the County of *S.* Widow, was ^{Against an}
summoned to answer to *John A.* of a ^{Executrix upon}
Plea that she render to him nine Pounds ^{a Judgment}
and two Pence, which she owes to him ^{obtained in the}
and unjustly detains: And whereupon ^{Common-Pleas}
the same *J.* by *J. E.* his Attorney ^{against the Te-}
says, that whereas the same *J.* hereto- ^{stator, and (de-}
fore, to wit, in the Term of the Holy ^{vastavit), she}
Trinity, in the third and fourth Years ^{hath wasted,}
of the Reign of our Lord the now King, ^{awarded.}
in the Court of our said Lord the King
of the Bench here, to wit, at *West-*
minster, before Sir *Robert Eyre*, Knight,
and his Companions, then Justices of our
said Lord the King of the same Bench,
by Consideration of the same Court, had
recovered against one *T. B.* late of *C.*
in the County of *S.* Yeoman, as well a
certain Debt of six Pounds, as also of
three Pounds and two Pence, which
hath been adjudged to the same *J.* in
the same Court for his Damages which
he had sustained by the Occasion of de-
taining of that Debt, whereof he was
convicted, as by the Record and Process
thereof in the same Court, here remain-
ing in full Force and Effect, may more
plainly appear. And the same *J.* far-
ther says, that Execution of the Judg-
ment aforesaid yet remains to be done
for the Debt and Damages aforesaid;

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and that the aforesaid *T.* after the Judgment aforesaid, to wit, on the sixth Day of *March*, in the fourth Year of the Reign of our said Lord the now King, at *Westminster* aforesaid, made his last Will and Testament, and thereby constituted and appointed the aforesaid *A.* Executrix of his last Will aforesaid, and afterwards there died possessed of divers Goods and Chattels, to the Value of the Debt and Damages aforesaid and upwards; of which said Goods and Chattels the aforesaid *A.* after the Death of the aforesaid *T.* was possessed, by reason of the Execution of the last Will aforesaid, to wit, at *Westminster* aforesaid, in the County aforesaid. And the same *J.* farther in fact says, that the aforesaid *Anne* being possessed of the Goods and Chattels aforesaid, which were of the aforesaid *T. B.* at the time of his Death, so as is before related, after the Death of the above-named *T.* to wit, on the first Day of *October*, in the fourth Year of the Reign of our said Lord the now King, at *Westminster* aforesaid, hath wasted, and to her own proper Use converted divers Goods and Chattels, which were of the aforesaid *T. B.* at the time of his Death, and which after the Death of the aforesaid *T.* came to the Hands and Possession of

of the aforesaid *A.* to be administered to the Value of the Debt and Damages aforesaid recovered; whereby an Action hath accrued to the same *J.* to demand and have of the above-nam'd *A.* the aforesaid nine Pounds and two Pence: Yet the aforesaid *A.* although oftentimes required, hath not rendered the aforesaid nine Pounds and two Pence to the same *J.* but hath hitherto denied, and yet doth deny to render that to him; whereupon he says that he is worsted, and hath Damage to the Value of ten Pounds, and thereupon he brings his Suit.

Borret.

Middlesex, to wit. *T. G.* late of (21)
 —, otherwise called *T. G.* of —, Upon a Bail Bond by the Assignees of the Sheriff.
 was summoned to answer to *E. F.* and *R. W.* Assignees of Sir *F. F.* Knight, the Sheriff.
 and Sir *J. S.* Knight, now Sheriffs of against the Bail, according to the Statute.
 the County aforesaid, of a Plea that he render to them two hundred Pounds of lawful Money of *Great Britain*, which he owes to them and unjustly detains; and whereupon the same *E.* and *R.* by *J. E.* their Attorney say, That whereas one *T. B.* after the first Day of the Term of the Holy Trinity, in the Year of our Lord One thousand seven hundred

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dred and thirty-six, to wit, on the fourth Day of *November*, in the Year of our Lord One thousand seven hundred and thirty one, at the Parish of Saint *Botolph* without *Aldgate*, in the said County of *Middlesex*, by the afore-said *F. F.* then an Esquire, now a Knight and *J. S.* then Esquire, now a Knight; then being Sheriffs of the County of *Middlesex* afore-said, was arrested by virtue of a certain Writ of our Lord the now King, of *Capias*, issuing out of the Court of our said Lord the now King of the Bench here, to wit, at *Westminster*, in the County of *Middlesex* afore-said, directed to the Sheriffs of *Middlesex* afore-said, and returnable here from the Day of Saint *Martin* in fifteen Days, at the Suit of the said *E.* and *R.* of a Plea of *Trespas*; and also in a certain Plea of *Trespas* upon the Case, upon an Assumption to the Damage of them the said *E.* and *R.* of one hundred Pounds. And whereas the afore-said *F. F.* and *J. S.* then being Sheriffs of the County of *Middlesex*, as is before related of, and upon that Arrest took Bail from him the said *T. B.* in form following, to wit, The afore-said *T. B.* and the afore-said *T. G.* and one *J. P.* as the Bail of the afore-said *T. B.* on the afore-said

saïd fourth Day of *November*, in the Year of our Lord One thousand seven hundred and thirty one abovesaid, at the Parish of Saint *Botolph* without *Aldgate*, in the County of *Middlesex* aforesaid, by their certain Writing Obligatory, sealed with their Seals, the Date whereof is the Day and Year abovesaid, had jointly and separately granted themselves to be held and firmly bound to the aforesaid *F. F.* and *J. S.* then being Sheriffs of the County of *Middlesex* aforesaid, as is before related, by the Names of *F. F.* Esquire; and *J. S.* Esquire; Sheriffs of the County of *Middlesex* aforesaid, in the aforesaid two hundred Pounds, to be paid to the aforesaid Sheriffs, or their Assigns, when they should be thereunto required, with and under the Condition following, subscribed to the same Writing Obligatory (to wit), That if the aforesaid *T. B.* should appear before the Justices of our saïd Lord the King at *Westminster*, from the aforesaid Day of Saint *Martin* in fifteen Days, to answer to the aforesaid *E.* and *R.* of a Plea of Trespass, and also in a certain Plea of Trespass upon the Case, upon an Assumption to the Damage of them the saïd *E.* and *R.* of one hundred Pounds;

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That then that Obligation should be Void and of none Effect, otherwise it should stand and remain in full Force, Power, and Virtue, as by the said Writing Obligatory and Condition thereof may more fully appear; which said *T. B.* hath not appeared in the same Court here, according to the Form and Effect of that Condition, whereby that Writing Obligatory became forfeited: And whereas the aforesaid *F. F.* and *J. S.* being Sheriffs of *Middlesex* aforesaid, as is before related, afterwards and before the Payment of the Money aforesaid, contained in the said Writing Obligatory; to wit, on the seventh Day of *December*, in the Year of our Lord One thousand seven hundred and thirty one abovesaid, at the said Parish of *St. Botolph* without *Aldgate*, in the County of *Middlesex* aforesaid, at the Request of them the said *E.* and *R.* the Plaintiffs in that Suit, and at the Charges of them the said *E.* and *R.* according to the Form of the Statute in such Case lately made and provided, in due manner assigned to the same *E.* and *R.* that Writing Obligatory, by then and there endorsing thereupon that Assignment under the Hand and Seal of the Office of him the said Sheriff of *Middlesex* aforesaid, attested in the Presence

sence of two credible Witnesses, to wit, *J. D.* and *W. S.* which said Writing Obligatory, sealed with the Seal of the aforesaid *T. G.* with the Condition aforesaid, thereunto Substituted, and so as is before related, endorsed, and likewise Sealed with the Seal of the aforesaid Sheriffs, bearing date on the aforesaid respective Days, the same *E.* and *R.* bring here into Court; by which and by force of the Statute aforesaid in such Case lately made and provided, an Action hath accrued to the same *E.* and *R.* as Assignees of the aforesaid Sheriffs of the County of *Middlesex*, to demand and have of the above-named *T. G.* the aforesaid two hundred Pounds. Yet the aforesaid *T. G.* although oftentimes required, hath not rendered the aforesaid two hundred Pounds to the aforesaid *F.* and *J.* Sheriffs of *Middlesex* aforesaid, or to the same *E.* and *R.* or any of them, but hath entirely denied to render that to them, and yet doth deny to render that to the same *E.* and *R.* or either of them, to the Damage of them the said *E.* and *R.* of twenty Pounds; and thereupon they bring their Suit.

Of Detinue.

What it is.

DETINUE is a Writ that lies against him, who having Goods and Chattels delivered to him to keep, refuses to re-deliver them. *See hereof, F. N. B. 138.*

The Nature of the Action.

Detinue ought to be always of a thing in certain, and the Nature of the Thing demanded must continue; for that in this Action the Thing itself is to be recovered, as the Value is in Trover, and for this reason, and because in Detinue the Defendant may wage his Law, which he cannot do in Trover, are the reasons why more Actions are brought in Trover than in Detinue.

Detinue is either for { Chattels,
or
Charters.

Breve de Detentione dicitur a dicendo, because *detinet* (he detaineth) is the principal Word in the Writ. *Co. Lit. 286.*

The Count must be certain.

And the Count or Declaration ought to name all Things in certain, and the Value, but it need not say how the Defendant came by them; (yet 'tis generally

rally said that the Plaintiff was possessed and lost them, and the Defendant found them, or that the Plaintiff delivered them to the Defendant to be safely kept, and re-delivered when demanded).

See more of this Action, in the Survey of the Law ; Title, Detinue. See also *Rastall's* Entries.

Essex, to wit. *C. D.* late of *Witbam* A Declaration for a Bond detained. in the County of *Essex* aforesaid, Yeoman, was summoned to answer to *A. B.* Esquire, of a Plea that he render to him a certain Writing Obligatory, which from him he unjustly detains; and whereupon the aforesaid *A. B.* by *M. H.* his Attorney saith, That whereas he the said *A. B.* on the first Day of *October*, in the sixth Year of his present Majesty King *George* the second, at *Witbam* aforesaid, delivered to the said *C. D.* the Writing aforesaid, in which was contained, that one *E. F.* was held and obligated to him the said *A. B.* in five hundred Pounds, (and to be paid unto the said *A. B.* at a certain time in the said writing contained to be safely kept) and unto him the said *A. B.* to be re-delivered, when he the said *C. D.* should be thereunto required; nevertheless the aforesaid *C. D.* (although often required) the Writing aforesaid
unto

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unto the said *A. B.* hath not as yet delivered, but to deliver the same to him, hitherto refuses and still doth refuse, and unjustly detains; whereupon the said *A. B.* saith, that he is worsted, and hath Damage to the Value of twenty Pounds; and thereupon he brings his Suit.

Of Accompt.

*The Nature of
the Action, for
what it lies, and
against whom.*

ACCOMPT is a Writ, and it lies where a Bailiff or Receiver to any Lord or other Man, who ought to render accompt, will not give his account, then he to whom the Account ought to be given shall have this Writ or Action; it lies also against a Person to whom Goods are sent to be sold for another; and by the Statute of *Westminster*, II. Chap. 10. if the Accomptant be found in Arrearages, the Auditors that are assigned to him have power to award him to Prison, there to abide 'till he have made satisfaction to the Party: But if the Auditors will not allow reasonable Expence and Costs, or if they charge him with more Receipts than they ought, then his next Friend may

may sue a Writ of *ex parte talis*, out of the High Court of Chancery, directed to the Sheriff to take four Mainpernors, to bring his Body before the Barons of the Exchequer at a certain Day, and to warn the Lord to appear there the same Day.

And by a Statute of the 4 and 5 of ^{Stat. 4. and 5.} Queen Anne, this Action lies against Executors and Administrators of every Guardian, Bailiff and Receiver, and by one Joint-Tenant and Tenant in Common, his Executors and Administrators, against the other as Bailiff, for receiving more than his just Share, and against their Executors and Administrators; and the Auditors are to examine the Party upon Oath.

Middlesex, to wit. *W. M.* complains ^{A Declaration for Money due upon Account as Bailiff to sell the Goods of the Plaintiff's.} of *J. P.* in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself being, of a Plea that he render to him a reasonable Account for the time wherein he was Bailiff, of the Goods of him the said *W.* at *Westminster* in the County aforesaid; for that, to wit, that whereas the aforesaid *J.* between the sixteenth day of *September*, in the Year of our Lord One thousand seven hundred and thirty, and the eleventh day of *February*, in the Year

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year of our Lord One thousand seven hundred and thirty two, at *Westminster* aforesaid, in the said County of *Middlesex*, had been Bailiff of the Goods and Chattels of him the said *W.* and within that Time, at *Westminster* aforesaid, in the said County of *Middlesex*, had received of the Goods and Chattels of him the said *W.* the Goods and Chattels following, (to wit) Eighty and two Peices of Broad-cloth, each Peice thereof containing thirty and three Yards, to the Value of two thousand Pounds of lawful Money of *Great Britain*, to Merchandize, Sell, and make the best Advantage and Profit thereof for the same *W.* and to render reasonable Account thereof to the same *W.* when he should be thereunto requir'd. Yet the aforesaid *J.* although oftentimes required, hath not rendered his reasonable Account thereof to the above-named *W.* but hath hitherto entirely denied, and yet doth deny, to render that to him, to the Damage of him the said *W.* of two thousand Pounds; and thereupon he brings his Suit.

To

*To the Justices of our Lord the King of
the Bench.*

*Easter Term, in the fifth Year of King
George the Second.*

Borret.

London, to wit. *L. H.* Esquire, by *Bill against an*
J. E. his Attorney, complains of *T. B.* *Attorney of*
Gentleman, one of the Attornies of the *the Court of*
Court of our Lord the King of the *Common Pleas*
Bench here, being present here in *upon an Ac-*
Court in his own proper Person, of a *count as Re-*
Plea that he render to him his reason- *ceiver of the*
able Account for the Time wherein he *Money of the*
was Receiver of the Moneys of him the *Plainsiff's.*
said *L.* for that, to wit, That where-
as the aforesaid *T.* on the fifteenth Day
of *January*, in the Year of our Lord
One thousand seven hundred and thirty
one, at *London* aforesaid, to wit, in
the Parish of *Saint Mary of the Arches*,
in the Ward of *Cheap*, had been the
Receiver of the Money of him the said
L. and then and there had received of
the Money of him the said *L.* by the
proper Hands of him the said *L.* One
hundred Pounds, to render a reasonable
Account thereof to the same *L.* when
he should be thereunto required: Yet
the aforesaid *T.* although oftentimes re-
quired, hath not rendered a reasonable
Account

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Account thereof to the same L. but hitherto entirely denied, and yet doth deny to render that to him: Whereupon he says that he is worsted, and hath Damage to the Value of one hundred Pounds; and thereof he prays Remedy.

Pledges of prosecuting } *John Doe,*
and
} *Richard Roe.*

Of Covenant.

The Nature of Covenant.

The Nature of **C**OVENANT, (as defined in the Terms of the Law) is the Agreement or Consent, of two or more by Deed in Writing Sealed and Delivered, whereby either of the said Parties doth promise to the other, That something is already done, or thereafter shall be done: Now a Covenant is not a Duty, nor cause of Action, 'till it be broken, and when it is broken, the Action is not meerly founded on the Specialty as if it were a Duty, but favours of Trespas; and therefore an Accord is a good Plea to it, and it lies in Damages, in *Eeles's* and *Lambert's* Case. *Allen, 38, 39.*

Covenant, to perform certain Indentures, and to save harmless, Performance of

of Covenants cannot be pleaded generally, for that some of them may be in the Negative, and for that he ought to show how he saved the Plaintiff harmless. *Allen*, 72.

A negative Covenant is not said to be performed, until it become impossible to break it.

All Covenants against the Lessor and Lessee, are Covenants in Law. *Vaughan*, 118.

An express Covenant in Deed, restrains the general Covenant in Law. *Idem* 126.

Covenant, that the Lessee shall enjoy against all Persons; yet he shall not have an Action against the Lessor, unless he be legally outed; for that the Lessee hath a Remedy against any wrong doer. *Idem* 119. 120.

If the Lease is not good, there is no Covenant nor Breach. *Yelv.* 18. 19.

Assignee of the Reversion shall have Covenant against the Lessee, where the Lease was made, for Covenant goes only in privity of Contract; and although now by the Statute, the Covenant passeth to the Assignee, yet the Nature of it is not altered by the Statute; but it is assignable only as a Contract, and therefore ought to be brought where the Contract was made; otherwise, in Debt
for

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for Rent. 1 Lev. 259. 1 Sand. 237.
1 Sid. 401.

How to De-
clare.

In declaring upon a Lease for not paying of the Rent, you are to recite the Lease over the Covenant to pay; and when for breach of Covenant, you recite over the Covenant broken, upon which you found your Action; and observe where there is only a Hand to a Writing, and not a Seal, Covenant lies not, but Case upon an Agreement, and you declare reciting the Agreement, that in Consideration the Plaintiff had promised to perform such Agreement on his Part, the Defendant promised to perform the same on his Part, and then assign the Breach, that he did not perform, to the Plaintiff's Damage, and so forth.

(1) *Middlesex*, to wit. *Abel B.* Esquire, and *Joseph H.* Gentleman, complain of *John A.* Gentleman, and *Mary* his Wife, the Assignee of *Samuel L.* the Father of her the said *Mary*, in the Custody of the Marshal of the *Marshalsey* of our Lord the King, before the King himself being, Of a Plea of Covenants broken; for that, to wit, That whereas on the first Day of *December*, in the third Year of the Reign of our Sovereign Lord *William* and Lady *Mary*, late King and Queen of *England*,

A Declaration in Covenants broken, as well for Rent, as for not repairing the Tenements demised against an Assignee where the Defendant married

England, by their certain Indenture made at the Parish of Saint *John's Wapping*, in the County of *Middlesex*, between one *Dorothy E.* and them the said *Abel* and *Joseph*, by the Names of *Dorothy E.* the Wife of *John E.* of *Enborne* in the County of *Berks*, Gentleman; *Abel B.* of the *Inner Temple, London*, Esquire, and *Joseph H.* of Saint *Katherine's* near the Tower, *London*, Gentleman, of the one part, and the said *Samuel* in his Life-time, by the Name of *Samuel L.* of *Wapping* in the County of *Middlesex*, Black-maker, of the other part: The other part of which said Indenture, sealed with the Seal of the said *Samuel*, the same *Abel* and *Joseph* bring here into Court, the Date whereof is the same Day and Year: it is witnessed, that as well for and in consideration that the said *Samuel L.* in his Life-time, at his own Charges, had erected and built a new Messuage or Tenement upon the Soil and Ground in the said Indenture afterwards mentioned, demised, as also for and in consideration of the Rents and Covenants in the said Indenture mentioned, to be expressed and contained on the part of the aforesaid *Samuel L.* his Executors, Administrators, and Assigns, to be paid, done and performed,

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they the said *Abel B.* and *Joseph*, by the Direction and Appointment of the said *Dorothy E.* testified by the same *Dorothy E.* being made party to the said Indenture, and signing and sealing of the same, had demised, granted, and to Farm let; and by the same Indenture aforesaid did demise, grant, and to Farm let to the said *Samuel L.* all that Ground, Soil, and Timber-Wharf, and Messuage, or Tenement thereupon or upon any part thereof then lately erected or built, situate, lying and being upon the South part of *Wapping Street*, then before in the Possession of the aforesaid *Dorothy*, abutting East upon a certain Messuage or Yard then or then before of one *John T.* and one *Henry W.* or their Under-Tenants or Assigns; West, upon a certain Wood-Yard then or then before in the Occupation of one *Francis B.* North, upon a certain *Street* called *Wapping Street*; and South, upon the River *Thames*, containing in Front from East to West nigh the aforesaid *Street* called *Wapping Street* aforesaid, fifty five Feet of Assize, little more or less; and nigh the said River *Thames* sixty seven Feet of Assize, little more or less; and in depth from the North to the South, towards the East, fifty seven Feet of Assize, little more or less; and
towards

towards the West fifty Seven Feet and an half of Assize, little more or less; together with all Ways, Lights, Easements, Profits, Commodities, and Appurtenances to the said Messuage or Tenement, and Premises, by the said Indenture demised, belonging, or of right appertaining; all which said Premises then were, or then late had been in the Tenure or Occupation of the said *Samuel L.* or his Assigns, to have and to hold, to the above-named *Samuel L.* his Executors, Administrators, or Assigns, for and during, and unto the full End and Term of Forty Years, to be accounted from the Feast of Saint *Michael* the Arch-Angel, which was in the Year of our Lord One thousand six hundred and eighty-five, from thence next ensuing, and fully to be compleat and ended: Yielding, and paying therefore yearly, and every Year during the said Term of Forty Years, to the same *Abel* and *Joseph*, the yearly Rent or Sum of Thirty and Four Pounds, of lawful Money of this Realm, at the four most usual Feasts or Times in the Year, to wit, at the Feasts of the Birth of our Lord *Christ*, the Annunciation of the Blessed Virgin *Mary*, the Nativity of Saint *John* the Baptist, and Saint *Michael* the Arch-Angel, by even and equal Portions. And the aforesaid *Samuel L.* for himself,

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self, his Executors, Administrators and Assigns, and for every of them, did Covenant, Promise, and Grant, to and with them the said *Abel B.* and *Joseph H.* their Executors, Administrators and Assigns, by the said Indenture in Manner and Form following, (that is to say) that the aforesaid *Samuel L.* his Executors, Administrators and Assigns, or some of them, would well and faithfully pay, or cause to be paid, to the said *Abel B.* and *Joseph H.* their Executors, Administrators and Assigns, at all Times from thence, for and during the said Term of Forty Years aforesaid, the yearly Rent or Sum of thirty-four Pounds, of lawful Money of this Realm, in Manner and Form aforesaid, at the Days and Times by the said Indenture before limited or expressed for the Payment thereof, according to the true Intent and Meaning of the same Indenture aforesaid. And that he the said *Samuel*, his Executors, Administrators and Assigns, or some of them, at all Times during the said Term of Forty Years, at his and their own proper Costs and Charges, would well and sufficiently repair, uphold, amend, support, keep and maintain all and singular the said demised Premises, and every Part thereof, and the said Wharf, Walls, Banks,

Banks, Mounds, Pales, and Fences belonging to the said demised Premises, and every Part thereof; and also all and singular the Messuages, Tenements and Buildings then erected or built, or that then should be erected, made, or built in or upon the said demised Premises, or any Part thereof, during the Continuance of the said Demise, in, by, and with all and all manner of needful and necessary Reparation, Wharfing, Walling, Paleing, Fences, and Amendments whatsoever, as well in the principal and chief Walls, as also in the Foundation and Water-works thereof, or in any Manner whatsoever: And would pave and amend all Pavements, as well within, as without the said demised Premises thereunto belonging; and would purge, scour, and amend all Gutters, Sinks, Sieges and Wid-draughts belonging or appertaining to the same Premises, or to any part thereof, from Time to Time, and all Times when and so often as Need or Occasion should be and require, as by the same Indenture, among other Things, may more plainly appear. By Virtue of which said Demise, the aforesaid *Samuel L.* in his Life-time, entered into the aforesaid demised Premises, with their Appurtenances, and was possessed thereof;

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and being so possessed thereof, the same *Samuel* afterwards, to wit, on the Twentieth Day of *May*, in the Twelfth Year of the Reign of our late Sovereign Lord *William* the Third, King of *England*, at the said Parish of Saint *John's Wapping*, in the County aforesaid, made his last Will and Testament in Writing, and thereby constituted and appointed the same *Mary* to be the Executrix of his last Will aforesaid, and afterwards there died possessed of the aforesaid demised Premises, as is before related; after whose Death, the aforesaid *Mary*, while she was sole, took upon herself the Burthen of the Execution of the last Will aforesaid, and in due Form of Law proved that Will, to wit, at the Parish and County aforesaid, whereby the aforesaid *Mary* entered into the aforesaid demised Premises, with their Appurtenances, and was possessed thereof, and being so possessed thereof, the same *Mary* afterwards, to wit, on the Third Day of *June*, in the Second Year of the Reign of our Sovereign Lady *Anne*, now Queen of *England*, at the Parish aforesaid, in the said County, inter-married with the aforesaid *John A.* and by reason thereof, the said *John* and *Mary* were, and yet are possessed of and in the Tenements aforesaid, with
their

their Appurtenances, as is before related to be demised ; and being so possessed, Twenty Five Pounds and Ten Shillings of the said Rent of Thirty Four Pounds, after the Death of the said *Samuel*, and after the Marriage celebrated between them, was in Arrearage, and yet is unpaid to them the said *Abel* and *Joseph* for Three Quarters of a Year, ending at the Feast of the Annunciation of the blessed Virgin *Mary*, in the Fourth Year of the Reign of our said Lady the now Queen. And that the said *John* and *Mary*, after the Death of the above-named *Samuel L.* or after the Marriage celebrated between them, although oftentimes required, have not paid, neither hath either of them paid to the same *Abel* and *Joseph*, or to either of them, the aforesaid Twenty-five Pounds, and Ten Shillings, or any Part thereof, at the said Feast of the Annunciation of the blessed Virgin *Mary*, in the Fourth Year abovesaid, nor at any Time afterwards, according to the Form and Effect of the said Indenture. And they the same *Abel* and *Joseph* further in Fact say, That the aforesaid *Mary*, while she was sole, after the Death of the above-named *Samuel L.* and the aforesaid *John* and *Mary*, after the Marriage celebrated between them, and

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within the Term by the said Indenture demised, to wit, on the Twenty Second Day of *April*, in the Fourth Year above said, and for the Space of Three Years then last past, and from that Time until the Day of the exhibiting of the Bill of them the said *Abel* and *Joseph*, permitted the whole Messuage aforesaid, or Tenement by the said Indenture above demised, to be entirely ruinous, and utterly destroyed, spoiled, and fallen down, being decayed by Default of necessary Amendments and Reparations of the same. And so the same *Abel* and *Joseph* say, that the aforesaid *John* and *Mary*, after the Death of the above-named *Samuel L.* have not kept, neither hath either of them kept with the same *Abel* and *Joseph* the Covenant aforesaid of him the said *Samuel* in this Particular, made with the same *Abel* and *Joseph*, in the Life-time of him the said *Samuel*, but have altogether broke the same, and they have utterly denied, and yet do deny to keep that with them; whereupon the same *Abel* and *Joseph* say, that they are worsted, and have Damage to the Value of One Thousand Pounds, and thereupon they bring their Suit.

London,

London, to wit: *Thomas S.* com- (2)
 plains of *William E.* in the Custody of Upon a Bill of
 the Marshal of the *Marshalsey* of our Sale for a
 Lord the King, before the King him- Ship which was
 self being, of a Plea of Covenants broken, not a free Ship,
 for that, to wit, that whereas by a cer- according to
 tain Writing, or Bill of Sale made at the Covenants
London, to wit, in the Parish of Saint mentioned in
Mary of the Arches, in the Ward of the said Bill
Cheap, bearing Date on the Tenth Day of Sale.
 of *July*, in the Year of our Lord One
 thousand seven hundred and thirty-one,
 which said Writing, sealed with the
 Seal of him the said *W.* the same *T.*
 brings here into Court; the aforesaid *W.*
 by the Name of *W. E.* of *Redriff* in
 the County of *Surry*, Shipwright, for
 and in Consideration of Five Hundred
 Pounds of lawful Money of *Great Bri-*
tain to him in Hand paid at or before
 the sealing of the same Writing, by the a-
 foresaid *T. S.* by the Name of *T. S.* of
C. in the County of *Suffolk*, Mariner,
 the Receipt whereof the aforesaid *W.*
 did thereby acknowledge, and himself
 therewith to be fully satisfied, and there-
 from, and from every Part thereof hath
 fully and absolutely released, and dis-
 charged the aforesaid *T. S.* his Execu-
 tors, Administrators and Assigns, for
 ever, by the Writing aforesaid, hath
 fully

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fully and absolutely granted, bargained and sold to the aforesaid *T. S.* three full and equal Quarters, or fourth Parts of the good Ship or Vessel called the *Hope*, of the Burthen of Two Hundred Ton, or thereabouts, then in the River *Thames*, whereof the said *T. S.* then was Master; and also three Quarters, or fourth Parts of all and singular Anchors, Cables, Ropes, Cords, Masts, Sails, Sail-yards, Tackle, Apparel, Boats, Oars, Guns, Ammunition, Provision, Furniture, and other Things whatsoever, belonging, or in any wise appertaining to the said Ship or Vessel, to have and to hold the said three Quarters, or fourth Parts of the said Ship, and all other the above bargained Premises, to the said *T. S.* his Executors, Administrators or Assigns, to his, and their own proper Use, and as his and their own proper Goods and Chattels from that Time for ever. And he the said *W. E.* for himself, his Executors, Administrators, did by the said Writing covenant and agree to and with the said *T. S.* his Executors, Administrators and Assigns, that he the said *W.* had in himself good Right, full Power, and lawful Authority to grant, bargain and sell the said three Quarters, or fourth Parts of the said Ship, and all other the Premises above bargained to the aforesaid *T. S.* his Executors, Administrators,

ministrators and Assigns, in Manner aforesaid; and that the said three Quarters, or fourth Parts of the said Ship, and all other the Premises above bargained then were, and so from that Time for ever should remain, and continue to the aforesaid *T.* *S.* his Executors, Administrators, and Assigns, free and clear; and freely, and clearly acquitted and discharged of and from all former Bargains, Sales, Debts, Charges and Incumbrances whatsoever, as by the said Writing (among other Things) may more fully appear. And the aforesaid *T.* protesting that the aforesaid *W.* hath not performed, fulfilled or kept any of the Covenants, Grants, Articles or Agreements in the said Writing above specified, on his Part to be performed, fulfilled, and kept according to the Form and Effect of that Writing in Fact, the same *T.* says, that the said Ship, at the aforesaid Time of the making of the Writing aforesaid, was not a free Ship, nor built within this Kingdom; but the Ship was built in Parts beyond the Seas, unknown to the same *T.* and upon that Account, at the said Time of the making of the Writing aforesaid, was charged, and chargeable, and always from that Time afterwards hitherto continued, and was, and now is charged and chargeable with divers Debts and Charges,

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Charges, to wit, at *London* aforesaid, in the Parish and Ward aforesaid, whereby the aforesaid three-fourth Parts of the said Ship by the said *W.* to the same *T.* as is before related, to be sold at the said Time of the making of the Writing aforesaid was, and remained, and now are incumbered with divers Debts and Incumbrances not discharged or acquitted by the aforesaid *W.* to wit, at *London* aforesaid, in the Parish and Ward aforesaid: And so the same *T.* says, that the aforesaid *W.* hath not kept his Covenant aforesaid with the said *T.* in this Particular, so as is before related to be made to the same *T.* but hath unjustly broke the same, and hath entirely denied, and yet doth deny to keep that with him; whereupon he says that he is worsted, and hath Damage to the Value of Five Hundred Pounds; and thereupon he brings his Suit.

In the Common Pleas.

*Michaelmas Term, in the Sixth Year
of King George the Second.*

Cook.

*Upon Inden-
tures to save
harmless.*

London, (to wit): *C. D.* late of *London*, Goldsmith, was summoned to answer to *A. B.* Esquire, of a Plea, that

that he keep with him a Covenant made between them, according to the Force, Form and Effect of certain Indentures thereof made between them: And whereupon the same *A.* by *J. E.* his Attorney, says, That whereas, by a certain Indenture made at *London* aforesaid, to wit, in the Parish of Saint *Mary of the Arches*, in the Ward of *Cheap*, on the Third Day of *October*, in the Fourth Year of the Reign of our Lord the now King, between him the said *A. B.* by the Name of *A. B.* of *Lewes*, in the County of *Sussex*, Esquire, of the one Part, and the above-named *C. D.* by the Name of *C. D.* of *London*, Goldsmith, of the other Part; the other Part of which said Indenture, sealed with the Seal of the aforesaid *C.* the same *A.* brings here into Court, the Date whereof is the same Day and Year; it is witnessed, That whereas ——— (*and so forth, as in the Indenture*) ——— And so the *Conclusion.* same *A.* says, that the aforesaid *C.* although oftentimes required, hath not kept that Covenant with the same *A.* of that, That he, his Heirs, Executors, and Administrators, at all Times after the making of the said Indenture, would discharge, and keep indemnified him the said *A.* his Heirs, Executors and Administrators, from the aforesaid annual
Rent

The Clerk's

Rent of Thirty Pounds, and from the Arrears thereof, but hath broke the same, and hath hitherto denied, and yet doth deny to keep that with him; whereupon he says that he is worsted, and hath Damage to the Value of Four Hundred Pounds; and thereupon he brings his Suit.

*Declaration to
be paid for.*

The Declaration being delivered, for which the Defendant's Attorney is to pay Four Pence for every Sheet, that is, for every Seventy-two Words, besides the Stamp Duty, to wit, a double Penny upon each Sheet.

*Rules to plead
to be given.*

In the next Place, you are to give a Rule to plead, which is to be done in the King's Bench, with Mr. *James Munday*, the Clerk of the Rules; and in the Common Pleas with the respective Secondaries, for which you pay One Shilling and Four Pence: And it is proper, just as the Rule is out, which is in Four Days, to leave a Note with the Defendant's Attorney, naming the Cause, and requiring a Plea or Judgment therein; but observe, if you (according to the Act) affiled the Bail, or entered the Appearance for the Defendant, having given the regular Notice of your Declaration, there needs no further calling for a Plea: The Defendant ha-
ving

ving pleaded, you are to make up the Issue, which may be as follows.

Of the Term of the Holy Trinity, in the Fifth and Sixth Years of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith.

Roll ----- Ventris.

London, to wit: Be it remembered, The Issue in the King's Bench. that heretofore, to wit, in *Easter* Term last past, before our Lord the King at *Westminster*, came *John Clark*, by *Thomas Johnson*, his Attorney, and brought here into the Court of our said Lord the King, then there his certain Bill against *Thomas Tibbins*, in the Custody of the Marshal of the *Marshalsey* of our Lord the King, before the King himself being, of a Plea of Trespass and Assault, and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words; to wit, *London*, to wit, *John Clark* complains of *Thomas Tibbins*, in the Custody of the Marshal of the *Marshalsey* of our Lord the King, before the King himself being, of that, That he on the Tenth Day — and so on to the End of the Declaration, to wit, and

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and thereupon he brings his Suit. (*Then in another Line say.*)

Imparlanee.

And now at this Day, to wit, *Friday* next after the Morrow of the Holy Trinity — (to wit, the First Day of the Term the Issue is made up) — in this same Term, until which Day the aforesaid *Thomas Tibbins* had License to imparl to the Bill aforesaid, and then to answer the same before our Lord the King at *Westminster*, came as well the aforesaid *John Clark*, by his Attorney aforesaid, as the aforesaid *Thomas Tibbins*, by *William Moore*, his Attorney, and the same *Thomas Tibbins* defends himself against the Force and Injury, laid by the aforesaid *John Clark* to his Charge, when, where, and in such a Manner as this Court shall think fit; and says, that he is not guilty thereof, and of this he puts himself upon the Country, and the aforesaid *John Clark* likewise: Therefore let a Jury come thereupon, before our Lord the King at *Westminster*, (*the last Day of the Term the Issue is made up*) on *Wednesday* next after Three Weeks of the Holy Trinity, and who are neither of Kin to the aforesaid *John Clark*, nor to the aforesaid *Thomas Tibbins*, to recognize a Verdict between the Parties aforesaid, because as well the same *John Clark*

Plea.

Jury awarded.

Clark as the same Thomas Tibbins, have put themselves upon that Jury, the same Day is given to the Parties aforesaid, at the same Place.

Where you are concerned for the Defendant, you must be careful to plead in Time, lest Judgment should be signed against your Client by Default, that is, for want of a Plea; the Plea, if general, should be delivered to the Plaintiff's Attorney, but if you know not where to find him, it may be entered in the general Issue Book, kept by Mr. Lantrow, Clerk of the Doggets, in the King's Bench Office, to whom you pay Two-pence for the Entry, which is to be done in an Alphabetical Manner, beginning with the Defendant's Name, saying, *at the Suit of the Plaintiff*, naming his Name; then write the Plea in Miniature, *That he made no such Promise, or that it is not his Deed*, or the like, and then add the Attorney's Name, and where he lives, and the Day of the Month and the Year; and when the Plea is special, it must be left with one of the Clerks of the Papers, of whom hereafter.

In the Common Pleas, the Plea, whether general or special, must be delivered to the Plaintiff's Attorney; but if it happens you know not where to find

Plea, how to be delivered, or left in the King's Bench.

The like in the Common Pleas.

The Clerk's

him, it may be left with the respective Prothonotary, (in whose Office the Declaration was) wrote at length on a Piece of Paper, stamped with a double Penny Stamp.

*The Issue in
the Common
Plea.*

The Common Pleas Issue begins (without any Preface, or *Be it remembered*) with the Declaration, and goes on verbally to the End, after which the Plea is entered, beginning a new Line, without any Imparlance, (which that Court very rarely uses) as follows.

Plea.

And the said *Thomas Tibbins*, by *Thomas Sheppard*, his Attorney, comes and defends himself against the Force and Injury, (laid by the aforesaid *John Clark* to his Charge) when where and in such a Manner as this Court shall think fit, and says, that he is in no wise guilty of the Trespass and Assault aforesaid, and of this he puts himself upon the Country, and the aforesaid *John Clark* likewise. Therefore the Sheriff is commanded, that he cause to come here from the Day of the Holy Trinity, in three Weeks, twelve free and lawful Men, by whom the Truth of the Matter may be the better known, and who are neither of Kin to the aforesaid *John Clark*, nor to the aforesaid *Thomas Tibbins*, to recognize a Verdict between the Parties aforesaid, because as well

Jury awarded.

well the same *John Clark* as the same *Thomas Tibbins*, have put themselves upon the same Jury.

These Issues being wrote likewise up-^{Issues to be paid for, as the Declaration.} on a double Penny Stamp Sheet or Sheets of Paper, are to be delivered to the Defendant's Attorney, who likewise is to pay the Plaintiff's Attorney, as before, for the Declaration (unless the Declaration and Issue are both of the same Term) four Pence for every Sheet to be accounted as aforesaid, beside the Stamp Duty, and in the King's Bench, one Shilling for entering the Plea (if^{And for entering the Pleas.} the general Issue) and four Pence for the Warrant of Attorney; but in the Common Pleas two Shillings and eight Pence is paid: And where the Plaintiff's Attorney hath filed the Bail, or entered the Appearance, pursuant to the aforesaid Act, if the Defendant pleads, upon delivering the Issue, his Attorney usually pays for such Bail or Appearance; *sed quere*, for there is an Allowance made in taxing the Cost. If the Plaintiff is desirous to proceed in his Cause to Trial, 'tis usual, on the back of the Issue, to give Notice of Trial, which may be done in the Manner following, (to wit)

F 2

Master

The Clerk's

Clark against Tibbins.

Master Moore,

Notice of Trial.

Take Notice of Trial in this Cause, for the last Sitting within this present *Trinity* Term, to be had before the Right Honourable the Lord *Raymond*, at *Guildhall, London*, from

Your humble Servant,

June 15,
1732.

Thomas Johnson.

*What is proper
Notice.*

Eight Days is a proper Notice of Trial in Town; but if the Defendant lives above forty Miles from *London*, then fourteen Days Notice must be given; and where the Plaintiff hath lain still for a Year, without any Proceedings, a whole Term's Notice must be given; in the Country, at the Assizes, generally eight Days is sufficient, and the Notice may be for the next Assizes, to be held in and for the County of — from, and so forth. If the Plaintiff should not proceed to Trial, pursuant to his Notice, he will be subjected to Cost, unless he takes Care in Time, to wit, Two Days before the Commission Day, to countermand such his Notice of Trial, which may be done in Manner following, (to wit)

Clark

Clark against Tibbins.

Master Moore,

I do hereby countermand my Notice *Countermand.*
of Trial, formerly given you in this
Cause, and am,

Sir,

Your humble Servant,

June 24,
1732.

Thomas Johnson.

General Issues.

— *After the Words,* shall think *Not Guilty in*
fit, and says, that he is in no wise guilty *Case.*
of the Premises above charged upon
him, as the said *A.* above complains
against him, and of this he puts himself
upon the Country, and the aforesaid *A.*
likewise. Therefore, *and so on to the*
End as before.

— And says, that he did not as- *He made no*
sume upon himself in Manner and Form *such Promise.*
as the said *A.* above complains against
him, and of this; *as above, to the*
End.

Or, that he made no such Promise;
— *and so on.*

— And says, that he ought not to *That it is not*
be charged with the aforesaid Debt, by *his Deed.*
Virtue of the Writing Obligatory afore-
said,

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said, because he saith, that the Writing Obligatory aforesaid is not his Deed ; and of this, *as before*.

*The like in the
Common Pleas.*

The King's Bench and Common Pleas often vary in their Diction or Form, which should be carefully observed ; as for Instance, the above Plea in the Common Pleas is after the Words, *Because he saith, That that Writing is not his Deed, and of this*, as before in the Issue in the Common Pleas.

*Mutual Credits
to be ballanced.*

Where there is mutual Credit between the Plaintiff and Defendant, the Legislature have wisely provided, that the Accounts may be ballanced, or one Debt set against the other, but the Defendant is to take care, that he insist on it at the Time of his pleading, or he will lose the Benefit of this Act, which passed in the Second Year of his present Majesty King George the Second, and is entitled, *An Act for the Relief of Debtors, with respect to the Imprisonment of their Persons* ; wherein among other Things, it is enacted, That where there are mutual Debts between the Plaintiff and Defendant, or if either Party sue, or be sued, as Executor or Administrator, where there are mutual Debts between the Testator or Intestate, and either Party, one Debt may be set against the other, and such Matter may
be

*By Stat. 2 Geo.
2.*

be set against the other, and such Matter may be given in Evidence upon the general Issue, or pleaded in Bar, as the Nature of the Case shall require, so as at the Time of his pleading the General Issue, where any such Debt of the Plaintiff, his Testator, or Intestate, is intended to be insisted on in Evidence, Notice shall be given of the particular Sum or Debt so intended to be insisted on, and upon what Account it became due, or otherwise such Matter shall not be allowed in Evidence upon such general Issue.

The Act is to continue in Force for Five Years only, and from thence to the End of the then next Session of Parliament. But as all must own this Law to be according to Equity and good Conscience, 'tis not to be doubted but this Clause will be continued. The Notice to be given to the Plaintiff's Attorney, at the Time of pleading, may be as follows, varying, nevertheless, according to the Nature of the Defendant's Debt.

Freke at the Suit of Fryer.

Master Lewis,

Take Notice, that the Defendant in-
tends to insist on in Evidence (at the
F 4 Trial

*Notice to be
given.*

The Clerk's

Trial of this Cause) of the Sum of Twelve Pounds Twelve Shillings and Six-pence, as due to him from the Plaintiff in this Cause, for fat Bullocks and Calves, sold and delivered by him the said Defendant to and for the Use of the Plaintiff, to be allowed to the Defendant, and set against the Plaintiff's Debt, by way of Ballance, according to the late Act of Parliament in that Case made and provided.

October 30, Yours,

1732.

Andrew Moreton.

Double Plea.

And where a Defendant has Two Ways to discharge himself from the Plaintiff's Demands, he may plead a double Plea, with Leave of the Court, (which will be granted upon a Motion made by Council) to wit, That he made no such Promise generally, and that the Action did not accrue within Six Years; or that the Defendant was a Bankrupt, and had his Certificate confirmed since the Plaintiff's Debt accrued, and that he was discharged by the Insolvent Debtor's Act: Or the like, as the Case shall happen.

*An Attorney
ought to have
Authority to
plead.*

Every Attorney, before he pleads to any Action, ought to take a Warrant of Attorney, or Authority from the Defendant,

pendant, to empower him so to do; for otherwise, if the Defendant be damified thereby, the Attorney will be subject to an Action. The Authority may be upon the Side of the Declaration, or upon other Paper, as follows.

Rose against Neble.

Master Johnson,

Pray plead to this Declaration, (or *The Authority.* to the Declaration against me in this Cause) the general Issue, or such other Plea as you shall think fit or be advised, and for your so doing this shall be your sufficient Authority in that Behalf; and I promise to pay you your Fees and Disbursements. Witness my Hand, this Twenty fourth Day of *October*, 1732.

Timothy Neble.

But if he has (as he ought to have) a Warrant to appear, or file Bail with the Clause for Payment, it may be left out in the Warrant to plead.

When you have an Issue to be made up of the same Term the Declaration is of, you say, London, to wit, *Be it remembered, that on Friday after the Morrow of the Holy Trinity, in this same Term, before our Lord the King;* and

Be it remembered, of the same Term.

The Clerk's

and so on as in the other, to the End of the Declaration, and then begin the Plea (as in the Common Pleas) directly without any Imparlance.

How to make up the Record in the King's Bench.

How to make up the Record for Trial in the King's Bench.

The Record for Trial is now to be made up, and must be engrossed on Parchment, with a double half Crown Stamp. You begin near the Top of the Parchment, and write in a common legible Hand or Character.

The Record.

Pleas before our Lord the King, at Westminster, of the Term of the Holy Trinity, in the Fifth and Sixth Years of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith.

And then you begin the Issue, and go quite through it, without Alteration, to the End; after which follows another Plea (to wit).

Pleas before our Lord the King at Westminster, of the Term of the Holy Trinity, in the Fifth and Sixth Years of the Reign of our Sovereign Lord George the Second, by the Grace of God,

God, of Great Britain, France and Ireland, King, Defender of the Faith.

And where the Proceedings so require it, the first Pleas must be of the Term the Issue was join'd, and the second Pleas of the Term the Issue is to be try'd. After this second Pleas, leaving about the Space of an Inch, you go on.

London, to wit: The Jury between *The Jury.*
John Clark, by his Attorney, Plaintiff,
 and *Thomas Tibbins*, of a Plea of Trespass and Assault, is respited before our Lord the King, at *Westminster*, until — (the Day next after the Sitting, if in Term, but if after Term, then the first Day of the next Term) — *Monday* next after three Weeks of Saint *Michael*, unless the beloved and faithful of our Lord the King, *Robert Lord Raymond*, Chief Justice of our said Lord the King, for Pleas assigned to be held in the Court of our said Lord the King, before the King himself, shall first come, — (the Day of the Sitting) — on *Tuesday* next after three Weeks of the Holy Trinity — (if in the Term, but if after, say) — on *Friday* the thirtieth Day of *June*, at *Guildhall, London*, according to the Form of the Statute, in such Case made and provided, for Default of the Jurors, because

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because none of them did appear : Therefore let the Sheriffs have the Bodies of the said Jurors, to make the said Jury between the Parties aforesaid, of the Plea aforesaid ; accordingly the same Day is given to the Parties aforesaid, at at the same Place.

*The Jury in
the Country.*

If in the Country, after until — (the first Day of the next Term) — *Monday* next after three Weeks of the Feast of Saint *Michael*, unless the King's Justices, assigned to hold the Assizes in the said County, shall first come, on *Wednesday* the sixteenth Day of *August*, at the Castle at *Leicester*, in the County aforesaid, according to the Form of the Statute in such Case made and provided for Default of the Jurors, because none of them did appear : Therefore, let the Sheriff have the Bodies of the said Jurors, to make the said Jury between the Parties aforesaid, of the Plea aforesaid ; accordingly, the same Day is given to the Parties aforesaid, at the same Place. And be it known, that the King's Writ in this Case, upon Record, was delivered to the Under Sheriff of the said County, on *Wednesday* next after three Weeks of the Holy Trinity, in this same Term, before our Lord the King, at *Westminster*, to be

be executed according to Law, at his Peril.

Your Record being thus ready for ^{Entering the} Sealing, (if the Issue is not already en- ^{Issue, and} tered) you must first make an *incipitur*, ^{sealing the} Record. or beginning to enter the Issue on the Roll, as before directed, and carry that with the Record to Mr. *Martin Lantrow*, Clerk of the Doggets, in the King's Bench Office, who will enter the same, and mark the Roll and Record, for which you pay according to the Length, and Six-pence for the Dogget; then you are to carry the Record to Mr. *William Tullie*, in the Treasury at *Westminster*, if in the Term, but if after the Term, to the *Nisi prius* Office in *Grays-Inn*, who will pass, and cause the same to be sealed, for which he takes according to the Length; generally, if under eight Sheets, six Shillings and Six-pence; if eight Sheets, seven Shillings and Six-pence; and for every eight Sheets after the first, seven Shillings; and for an old Issue, two Shillings extraordinary; and if three Weeks after the Term, two Shillings more, for a Judge's Warrant to pass the Record; to the Sealer most People give Six-pence.

You

*The Cause is
to be entered for
Tryal.*

You must be sure in Town at least two Days before the Day of the Sitting, to enter the Cause for Tryal in the Marshal's Book, kept for that purpose generally at the Lord Chief Justice's Chamber, for which you are to pay eleven Shillings and eight Pence; and if at the Assizes, you enter the Cause as soon as you can with the Judge's Marshal, and pay him twelve Shillings; and if you are not sworn an Attorney of that Court the Cause is brought in, you are to pay four Shillings more for a Warrant of Attorney: The *Venire* before mentioned, is a Writ directed to the Sheriff to impanel a Jury; and the *Distringas* another Writ to compel their Appearance, and are absolutely Necessary in all Causes to be brought to Tryal: They are made upon a piece of Parchment, stamped with a treble Sixpenny Stamp: They are not to be signed, but are sealed at the aforesaid Seal Office, for which you are to pay seven Pence a-piece: The Forms are as follows.

Venire and Distringas are to be sealed.

The Form of a Venire Facias.

The Venire.

George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith,

to the Sheriffs of *London*, Greeting:
We command you that you cause to
come before us at *Westminster*, on *Wed-*
nesday next after three Weeks of the
Holy Trinity, twelve free and lawful
Men of the Body of your County, each
of whom hath ten Pounds of Lands,
Tenements, or Rents, by the Year at
the least, by whom the Truth of the
Matter may be the better known; and
who neither to *John Clark* the Plain-
tiff, nor to *Thomas Tibbins*, are rela-
ted by any Affinity, to make a certain
Jury of the County, between the Parties
aforesaid, of a Plea of Trespass and As-
sault, because as well the said *Thomas*,
as the aforesaid *John*, between whom
the Contention is, have put themselves
on that Jury; and that you then leave
there the Names of the Jurors and this
Writ. Witness *Robert Lord Raymond*
the ninth Day of *June*, in the fifth
Year of our Reign.

Ventris.

The Form of a Distringas.

George the Second, — as in the *The Distringas,*
Venire to — We command you that
you distrain the Bodies of the several
Persons named in the Pannel to this
Writ annexed, the Jurors summoned in
our

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our Court before us, between *John Clark* Plaintiff, and *Thomas Tibbins*, by all their Lands and Chattels in your Bailiwick, so that neither they, nor any Person by their means intermeddle therewith, until you have our further Command thereupon; and that you answer the Issues thereof unto us, so that you have their Bodies before us at *Westminster*, on *Monday* next after three Weeks of Saint *Michael*, or before our beloved and faithful *Robert Lord Raymond*, our Chief Justice for Pleas assigned to be held before us, on *Friday* the thirtieth Day of *June*, at *Guildhall, London*, by Form of the Statute in that Case lately made and provided, come to make a certain Jury between the Parties aforesaid, of a Plea of Trespass and Assault, and to hear Judgment of more Defaults; and that you then have there this Writ. Witness *Robert Lord Raymond*, the twenty eighth Day of *June*, in the sixth Year of our Reign.

Ventris.

If in the Country say, before our Justices assigned to take the Assize —
and so forth.

*To be returned
by the Sheriff.*

In *London* and *Middlesex*, these two Writs are carried together to the Sheriff

riff to return them, for which you pay in *London* four Shillings only, but in *Middlesex* two Shillings for the *Venire*, and twelve Shillings for the *Distringas*; and in other Counties generally two Shillings and Six Pence for the *Venire*, which for the chief Part is returned by the Under Sheriff's Deputy in Town, and the Sheriffs return the *Distringas* at the Assizes, for which they are paid twelve Shillings. 'Tis sometimes necessary to have a *Subpœna*, to wit, a Writ to compel the Witnesses to appear at the Tryal and give their Evidence; it may be therefore necessary to give you the Form of that Writ, in which you may put four Witnesses Names; it is made on Parchment, stamped with a treble Six-penny Stamp: It should be signed with Mr. *John Hawley*, signer of the Writs before mentioned, to whom you pay one Shilling and eight Pence; and then sealed at the Seal Office aforesaid, for which pay seven Pence.

The Form of a Subpœna.

George the Second, by the Grace of *A Subpœna for*
 God, of Great Britain, France and *Witnesses.*
 Ireland, King, Defender of the Faith,
 to A. B. C. D. E. F. and G. H. Greet-
 Vol. II. G ing:

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ing: We command you and every of you, firmly enjoining, that laying aside all other Pretences and Excuses whatsoever, you and every of you be in your proper Persons before our beloved and faithful *Robert Lord Raymond*, our Chief Justice, for Pleas assigned to be held before us on *Friday* the Thirtieth Day of *June*, at *Guildhall, London*; to testify the Truth in a certain Matter of Controversy now depending in our Court before us at *Westminster*, undetermined, between *John Clark* Plaintiff, and *Thomas Tibbins* Defendant, in a Plea of Trespass and Assault, and at that Day to be tried by a Jury of the Country: And this you nor any of you are by any means to omit, on the Penalty of one hundred Pounds on every of you. Witness, *Robert Lord Raymond*; the twenty-eighth Day of *June*, in the sixth Year of our Reign.

Ventris.

You are to give a Ticket to every Witness, and shew to each the Original *Subpœna*, and generally with it one Shilling, which only shews, that the Witness is to be paid his Expences, and generally if a working Man something for his Time: The Form of the Ticket is as follows.

Tickets

Tickets for Witnesses.

A. B.

By virtue of a Writ of *Subpœna* to *The Ticket.*
 you directed, and herewith shewed unto
 you, you are personally to be and ap-
 pear before the Right Honourable *Ro-*
bert Lord *Raymond*, Lord Chief Justice
 of his Majesty's Court of *King's Bench*,
 on *Friday* next, the thirtieth Day of
June, at seven of the Clock in the
 Forenoon of the same Day, at *Guild-*
hall, London; to testify the Truth,
 according to your Knowledge, in a
 certain Cause now depending, between
John Clark Plaintiff, and *Thomas Tib-*
bins Defendant, in a Plea of Trespass
 and Assault on the part of the Plaintiff;
 and hereof you are not to fail, on pain
 of one hundred Pounds. Dated the
 twenty eighth Day of *June*, in the sixth
 Year of the Reign of our Sovereign
 Lord *George* the Second, by the Grace
 of God of *Great Britain, France, and*
Ireland, King, Defender of the Faith;
 and in the Year of our Lord one thou-
 sand seven hundred thirty and two.

By the Court.

By an Act of the Seventh and Eighth
 of *William* the Third, for the Ease of *Statute 7. and*
 Jurors, it is enacted, That if the Plaintiff *8. of Will. III.*
 G 2 shall

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shall not proceed to Trial of the Issue at the first Assizes after the Teste of the *Habeas Corpora* or *Distringas* with a *Nisi Prius*; that then, and in all such Cases (other than where Views by Jurors shall be directed); the Plaintiff, whenever he shall think fit to try the said Issue at any other Assizes, shall sue forth and prosecute a new Writ of *Venire facias*, directed to the Sheriff in this Form; *That of new, you make to come Twelve good and lawful Men, —* and so on, after the Manner aforesaid; that is to say, the Writ is to be the same in Form as the First, adding the Word of *new*, which Writ being duly returned and filed, a Writ of *Habeas Corpora* or *Distringas*, with a *Nisi Prius* shall issue thereupon, for the ancient Fees, as in the Case of a *plures Habeas Corpora*, or *Distringas* with a *Nisi Prius*; upon which the Plaintiff or Demandant shall and may proceed to Trial, as if no Form or Writ of *Venire facias* had been prosecuted or filed in that Cause: And so *toties quoties*, as the Case shall require.

And if any Defendant or Tenant shall be minded to bring the Issue to Trial, by *Proviso* (when by Course he may) of the issuable Term next proceeding such intended Trial, to be had at the
next

next Affizes, sue out a new *Venire facias* to the Sheriff, in Form aforesaid, by *Proviso*, and prosecute the same by Writ of *Habeas Corpora* or *Distringas*, with a *Nisi prius*, as though there had not been any former *Venire facias* sued out, or returned in that Cause; and so *toties quoties*, as the Matter shall require.

This Act provides, That Jurors to ^{Tales Men to be free, or Copyholders.} serve upon the *Tales* shall be Freeholders or Copyholders of the County, and returned upon some other Pannel to serve at the said Affizes, and attending in Court, and may be challenged by the Plaintiff or Defendant, as if they had been impannelled upon a *Venire Facias* awarded to try the Issue.

But these *Tales Men* will be pretty much, if not entirely taken off or disused by the late Act, for the better Re-^{Statute 3 G. 2.}gulation of Juries, which passed in the Third Year of his present Majesty King George the Second; wherein 'tis enacted, That from and after the Twenty-fifth Day of *December*, One thousand seven hundred and thirty, every Officer, to whom the Return of the *Venire Facias Furatores*, or other Process for Trial of Causes, before Justices of Assize, or *Nisi prius*, shall belong, shall, upon his Return, (unless in Causes to be tried at

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the Bar, or where a special Jury shall be struck by Order of Court) annex a Pannel to the Writ, containing the Christian and Surnames, Additions, and Places of Abode of a competent Number of Jurors, named in the Lists; the Names of the same Persons to be inserted in the Pannel annexed to every *Venire Facias*, for the Trial of all Issues, at the same Assizes in every County; which Number of Jurors shall not be less than Forty-eight, nor more than Seventy-two, without Direction of the Judges, or one of them, who may, if they see Cause, direct a greater or lesser Number: And though Writs of *Habeas Corpora Juratorum*, or *Distingas*, subsequent to such Writ, need not have inserted in the Bodies of such Writs the Names of all the Persons contained in such Pannels; but it shall be sufficient to insert in the Mandatory part of such Writ, *Corpora separalium personarum in pannello huic brevi annexo nominatarum*, or Words of the like import, and annex Pannels with the same Names as returned in the Pannel to the *Venire Facias*, with their Additions and Places of Abode; that the Parties concerned in such Trials may have timely Notice of the Jurors, in order to their Challenges: And for making these Returns
and

and Pannels, and annexing them to the Writs, no other Fee shall be taken than what is now allowed by Law ; and the Persons named in such Pannels shall be summoned to serve, and none others.

This Act also enacts, That the Jurors ^{Jurors to be drawn for, and Penalty on Defaulters.} shall be drawn for by the Way of Lots, and for non-appearance, after being called three times, on Oath, that he had been lawfully summoned, shall forfeit not exceeding five Pounds, nor less than Forty Shillings, unless reasonable Cause of Absence be proved by Oath, to the Satisfaction of the Judge.

Having prepared every Thing necessary for Trial thus far, you are now to ^{Breviats for Trial.} prepare your Briefs for Council, wherein great Knowledge and Experience is required, to know what is necessary to be proved, and what is Evidence, and what not, and to set forth (after abbreviating the Issue) the Case summarily, and yet perspicuously and fully, and then what is supposed will be offered, or objected by the other side. After the Trial is over, if in *London* or *Middlesex*, the Associate will deliver the Record to the Attorney concerned, (for the Person or Plaintiff, or Defendant meeting with Success) with the *Distringas*, and the Pannel, or Names of the Jurors thereunto annexed ; upon the Back of which

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The Postea.

Pannel he writes the Substance of the Verdict, that is, the Damages and Cost given by the Jury, which you are to fix or annex to the Record ; on the Back of which is to be endorsed the *Postea*, the Substance and Meaning of which is, That afterwards the Plaintiff and Defendant came by their Attorney before the Lord Chief Justice, or Justices of Assize, and the Jury, whereof mention is within named, were sworn ; and then sets forth what Verdict they found, as aforesaid : But in the Country, the Associate keeps the Record 'till the Term after the Assizes, and endorses for you the *Postea* thereon, and upon this *Postea* a Rule for Judgment is to be given by the Clerk of the Rules aforementioned, for which you pay one Shilling and Four-pence ; and it is to be marked by the aforesaid Clerk of the Bails, for which he is paid four Pence, and then being stamped with a double half Crown Stamp for Judgment, the Master or Secondary, *Samuel Clark*, Esquire, will tax, that is, give you an Increase of Cost, and mark what the Damages in the whole amounts to, and to whom you pay four Shillings, and where there is a Fine due, six Shillings and Eight-pence for the *Capiatur Fine*. You are next to carry it to Mr. *Tullie*, who will enter your final

The Cost taxed.

Final Judgment to be entered.

final Judgment for you, (the Issue Roll, of which hereafter, being first carried in) and for which you pay him one Shilling and Six-pence, or more, according to the Length, and then you are ready for Execution, which may be ^{And then Execution.} either against the Body, the Goods, or the Lands; the Forms whereof see after.

How to make up the Record in the Common Pleas.

The Record is to be made up, and all ^{Proceedings to be continued in one Prothonary's Office.} other Proceeding in every Cause is to be entered and carried on in that Prothonary's Office in which it first begun.

Your Parchment being stamped, as ^{How to make up the Record in the Common Pleas.} before directed, in the King's Bench, leaving about an Inch for the Margin, begin near the Top in a Common legible Hand or Character.

Pleas at Westminster, before Robert ^{The Record.} Eyre, Knight, and his Companions, Justices of our Lord the King of the Bench, of Trinity Term, in the Sixth and Seventh Years of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith.

*Roll the Tenth.
And*

London, to wit, The Jury between, ^{The Jury in London.}
and so on, as above; until (the very
next Day after the Sitting, if in the
Term, if not to the first Return Day of
the next Term, which is the Essoign
Day) unless Robert Eyre, Knight,
Chief Justice of our Lord the King of
the Bench here, assigned by Form of the
Statutes in such Case made and provided,
on (the Day of the Sitting) at Guild-
hall, London, — and so on to, was de-
livered to E. F. Esquire, Under She-
riff of London, in Form of Right to be
executed according to Law, at his Peril.

In *Middlesex* you say, — at *West-* ^{in Middlesex.}
minster aforesaid, in the Great Hall of
Pleas, vulgarly called *Westminster-Hall*,
there — (and so on to the End)

The Record being thus made up, be- ^{The Record to be sealed.}
fore it is sealed, you must make a begin-
ning to enter the Issue on a Roll you
receive from the Prothonatory, and
carry the same with the Record to him,
who will sign both upon being paid for
the Issue according to Length, and will
give you back the Roll to compleat
your Entry, after which you carry the
Record to the chief Clerk of the Trea-
sury, *Thomas Maidstone*, Esquire, at
his

The Clerk's

*Warrants of
Attorney to be
filed.*

his House in *Took's Court* in *Chancery-Lane*, to be sealed, to whom you pay for the first three Sheets two Shillings; and Four-pence for every Sheet more. And you are to make out Warrants of Attorney, to be affiled with the Clerk of the Warrants, *Edward Eyre*, Esquire, whose Office is executed by his Deputy, *Mr. John Ward*, at his Chambers in *Symonds Inn*, to whom you pay Four-pence a-piece for every Warrant in Debt, Trespass, and Detinue, and for every other Warrant, called double Warrants, Eight-pence. The Warrants are as follows.

*Warrant of
Attorney for
the Plaintiff.*

Essex, to wit. *A. B.* puts in his Place *E. F.* his Attorney against *C. D.* late of *C.* in the County aforesaid, Yeoman, of a Plea of Trespass on the Case.

*For the De-
fendants.*

Essex, to wit. To wit, *C. D.* late of — (as before) puts in his Place *G. H.* his Attorney, against *A. B.* of the Plea aforesaid.

These Warrants being affiled (as they must likewise be, by a late Order, before the signing any Judgment) with the Clerk of the Warrants aforesaid, he will sign your Record, and then you give it to the Clerk of the Jurats, to be examined,

examined, for which you pay him Sixpence, and then Mr. *Maidstone* will sign it, and give it to his Man to seal.

The Entry before mentioned to be on the Roll, is no more than the Issue from the beginning to the end, which when engrossed in a legible Hand or Character, and examined, you carry it to the Prothonatory, whose Clerk will instruct you to dogget it; and the future Proceeding in the Cause must be entered on the same Roll; all Judgments upon *Posteas* and Enquiries are entered by the Clerk of the Judgments in the respective Offices, for which you pay according to their Length, — but to proceed to Trial, you are to take care (as before observed in the King's Bench) to enter the Cause in due time with the Lord Chief Justice's Marshal, to whom you pay for such Entry fourteen Shillings: The *Venire Facias* is much the same as before in the King's Bench, adding the Defendant's Addition, which a little Experience will shew: The *Venire* must be signed by the Prothonatory, who takes one Shilling and four Pence for signing it; and then sealed at the aforesaid Office, for which you pay seven Pence; and having procured a return thereof from the Sheriff, you are to

The Issue to be entered.

And the subsequent Proceedings on the Roll.

The Cause to be entered for Trial.

Venire.

Habeas Corpora the same Use as the Distringas.

to carry it to the *Habeas Corpora* Office, kept by Mr. *Bulstrode*, at the Examiner's Office in the Rolls-Yard, who will make you a Writ of *Habeas Corpora* (which is of the same Purpose as the Writ of *Distringas* in the Court of King's Bench) and for which you are to pay him three Shillings and seven Pence, and for the Seal at the aforesaid Seal Office, you pay seven Pence: The *Venire* and the Pannel returned is kept and filed in the *Habeas Corpora* Office. This Writ being made by the proper Officer, the Form is not so material to be here inserted. If you want a *Subpana* for Witnesses see for the Form, as also of the Tickets before in the King's Bench; the little Variation as to the Chief Justice, the Addition to the Defendant's Name, and so forth, is easy.

How to enter the Issues in the Court of King's Bench.

How to enter the Issue in the King's Bench.

The Rolls for the *King's Bench*, on which the Issues and other Proceedings are entered, are delivered out by Messrs. *Loyd* and *Gibbons*, Stationers, in the *Temple*, at four Pence each Roll, which four Pence you are again allowed upon carrying in of the Roll. Upon this Roll you begin about six Inches or a Spand

Spand in depth from the Top, in a large yet a legible and common Hand or Character, in one Line ; after in a small Secretary Hand follows the Warrants of Attorney, and then the Issue (continuing the same Hand) in Words at length from the beginning to the end without Variation.

As yet of the Term of the Holy Trinity, Witness Robert Lord Raymond.

London, to wit. *John Clark* puts in ^{The Warrants of Attorney.} his Place *Thomas Johnson* his Attorney, against *Thomas Tibbins*, in a Plea of Trespas and Assault.

To wit, *Thomas Tibbins* puts in his Place *William Moore* his Attorney, at the Suit of *John Clark* in the Plea aforesaid.

London, to wit. Be it remembered ^{The Issue.} that heretofore, to wit, in *Easter Term* last past, before our Lord the King at *Westminster*, came *John Clark* by *Thomas Johnson* his Attorney, and brought here — and so on to the End of the Issue ; then at the bottom of the Roll, in such a large Hand as at the Top, add

Roll — Ventris.

Note,

The Clerk's

Note. If your Cause of Action arose in any of the Terms, your Entry must be, *Be it remembered that on* (such a Day, naming any Return at length after the Cause of Action did arise) in *Easter Term* last past, before our Lord the King at *Westminster*, came — *and so on as before*, — or after a Verdict the Judgment will be arrested upon Motion, the common Memorandum, or *Be it remembered*, referring to the first Day of the Term, which being before the Cause of Action is not to be endured.

How to enter Judgments without Trial, to wit, by Confession, saying nothing, or that I am not informed, in the Court of King's Bench.

How to enter Judgments without Trial.

Upon the like Roll as before mentioned, you begin as before in the Entry of the Issue — *As yet of* — and so on ; then you write the Warrants of Attorney as before instructed, adding — in a Plea of Debt — instead of in a Plea of Trespass and Assault, and then follows the Memorandum, or *Be it remembered*, which see the Forms of before, after which you begin the Declaration, and go on to the End, without Variation. The Declaration upon

a *Mutuatus*, or for Monies borrowed, is what is commonly used where the Warrant is to confess a Judgment without mentioning a Bond, after which you enter the Judgment, if it is of the same Term as the Declaration is of, without any Imparlance; but when the Declaration is of another Term, then 'tis entered with an Imparlance. The Judgment then by Confession is generally of the same Term, and entered without Imparlance, and is as followeth, (to wit).

And the aforesaid *C. D.* by *E. F.* ^{Judgment by} his Attorney, comes and defends himself ^{Confession for} against the Force and Injury laid to his ^{Monies borrow-} Charge, when, where, and in such ^{ed being of the} Manner as this Court shall think fit, and ^{same Term, is} says, that he cannot deny the Action ^{without Im-} aforesaid of the above-named *A. B.* nor but that he owes to the said *A. B.* the said two Hundred Pounds, in Manner and Form as the aforesaid *A. B.* above complains against him. — *There-* ^{Judgment} fore it is considered, that the aforesaid ^{signed the 25th} *A. B.* should recover against the same ^{of July, 1734,} *C. D.* his Debt aforesaid, and also sixty three Shillings for his Damages, which he sustained as well by Occasion of detaining of that Debt, as also for his Cost and Charges by him expended about his Suit in this behalf, by the Court

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The Clerk's

of our said Lord the said King now here; adjudged to the aforesaid *A. B.* with his Assent, and the aforesaid *C. D.* is in Mercy.

Mercy.

*The like upon
a Bond.*

If the Declaration is on a Bond, you must insert after the Words, — That he cannot deny the Action aforesaid of the abovesaid *A. B.* nor but that the Writing Obligatory aforesaid is the Deed of him the said *C. D.* nor but that he he owes, — *and so on to the End*, placing in the Margin as above, *Mercy.*

The like with an Imparlance.

*Saying nothing
in Debt, with
an Impar-
lance.*

And now at this Day, to wit, *Fri-*
day next after the Morrow of the Holy Trinity, in this same Term, until which Day the aforesaid *C. D.* had License of imparling to the Bill aforesaid, and then to answer the same before our Lord the King at *Westminster*, came the aforesaid *A. B.* by his Attorney aforesaid, and the aforesaid *C. D.* although at the same Day he was solemnly called, did not appear, nor said any thing in Bar or Preclusion of the Action aforesaid of the aforesaid *A. B.* whereby the same *A.* remains against the said *C.* without Defence thereof; — Therefore it is considered, — *and so on as before to the End.* *Mercy.*

And

And the aforesaid *C. D.* in his proper Person came and defended himself against the Force and Injury laid to his Charge, when, where, and in such a Manner as this Court shall think fit, and prayeth Leave to imparle to the Bill aforesaid, and it is granted unto him; and hereupon a Day is given to the Parties aforesaid, before our Lord the King at *Westminster*, until *Wednesday* next after three Weeks of the Holy Trinity, to wit, the same *C.* to imparle to the Bill aforesaid, and then to answer the same, at which Day, before our Lord the King at *Westminster*, came the aforesaid *A.* by his Attorney aforesaid, and the aforesaid *C.* although at the same Day he was solemnly called, did not appear, nor said any Thing, — and so on to the End (as in the next above) *Mercy.*

The like of the same Term with the Declaration, where an Imparlane is given to the last Day of the Term.

And the aforesaid *C. D.* by *E. F.* his Attorney, comes and defends himself against the Force and Injury, — (as before) and the aforesaid *A. B.* prays, that the aforesaid *C.* may answer to his Declaration aforesaid; whereupon the aforesaid Attorney of the aforesaid *C.* saith, That he is not informed by the same *C.* his Master, of any Answer to be given for the same *C.* to the same *A.*

I am not informed without Imparlane.

The Clerk's

in the Premisses, nor said any other Thing thereon in Bar or Preclusion of the Action of him the said *A.* whereby the same *A.* remains against the said *C.* without Defence thereof; — *Therefore, — and so on, as before, to the End. Mercy.*

*Estates effected
from the Time
of signing
Judgment
only.*

Always observe in these and other Judgments to set down in the Margin, as in the first Judgment by Confession, the Time when the Judgment was sign'd, for that from that Day only will they effect any Purchaser of Estates: Write likewise *Mercy* in the Margin.

*By Confession
after Plea
pleaded, and
withdrawn.*

Where the Defendant hath pleaded to an Action upon a Bond, that it is not his Deed, and Issue is taken thereon, if afterwards he consents to withdraw such Plea, and confesses the Action, then after the End of the Issue add, — At which Day, before our Lord the King at *Westminster*, came the Parties aforesaid, by their aforesaid Attornies, and hereupon the aforesaid *C.* withdrawing his Verification aforesaid, by him above pretended, saith, that he cannot deny the Action aforesaid of the abovesaid *A.* nor but that the Writing Obligatory aforesaid is the Deed of him the said *C.* nor but that he owes, — *and so on* (as in the first Judgment by Confession) *to the End. Mercy.*

And

And the aforesaid *C. D.* by *E. F.* ^{Against an Ad-}
her Attorney, comes and defends her-
self against the Force and Injury —
(as before) — and says, that she can-
not deny the Action aforesaid of the
abovesaid *A. B.* nor but that the Writing
Obligatory aforesaid is the Deed of him
the said *G. D.* nor but that she detains
from the said *A.* the aforesaid five hun-
dred Pounds, in Manner and Form as
the aforesaid *A.* above complains against
her, — Therefore it is considered, that
the aforesaid *A.* should recover against
the same *C.* his Debt aforesaid; and
also Fifty-three Shillings for his Da-
mages which he sustained, as well by
the Occasion of detaining of that Debt,
as also for his Cost and Charges by him
expended about his Suit in this Behalf,
by the Court of our said Lord the King,
here adjudged to the aforesaid *A.* with
his Assent, of the Goods and Chattels
which were the aforesaid *G.* at the
Time of his Death, in the Hands of her
the said *C.* to be administered, if she
hath so much in her Hands, and if she
hath not so much, then the Damages a-
foresaid of the proper Goods and Chat-
tels of her the said *C.* to be levied;
And the aforesaid *C.* is in Mercy.

Mercy.

The Clerk's

Saying nothing
in Case.
Of the
same Term
with the De-
claration is
without Im-
parlance; yet
a Day is given
to the last Day
of the Term.

And the aforesaid *C. D.* by *E. F.* his Attorney, comes and defends himself against the Force and Injury laid to his Charge, when (as before) and the aforesaid *A. B.* prays that the aforesaid *C.* may answer to his Declaration aforesaid, upon which the aforesaid *C.* hath to (the last Day of the Term) given him by the Court of our Lord the King here, to answer the same; the same Day is given to the aforesaid *A.* at the same Place. At which Day before our Lord the King at *Westminster* came the aforesaid *A.* by his Attorney aforesaid, and the same *C.* although at that Day solemnly called to answer did not appear, nor the same Attorney of the aforesaid *C.* said any thing for him the said *C.* in Bar or Preclusion of the Action aforesaid, of the aforesaid *A.* whereby the same *A.* remains against the said *C.* without Defence thereof; for that it is considered, that the aforesaid *A.* ought to recover his Damages against the same *C.* sustained by occasion of the Premises aforesaid. But because it remains unknown to the Court of our said Lord the King now here, what Damage the same *A.* in this behalf hath sustained; therefore it is commanded to the Sheriff of *Surry*, that he by the Oaths of twelve good
and

and lawful Men of his Bailiwick, diligently enquire what Damages the aforefaid *A.* hath fustained, as well by the occasion of the Premiffes aforefaid, as alfo for his Coft and Charges by him expended about his Suit in this behalf, and the Inquifition then taken he fend to our Lord the King at *Westminfter*, on (the return of the Writ of Inquiry) under his Seal, and the Seals of them by whose Oaths he took that Inquifition, together with the Writ of our faid Lord the King to him directed thereon; the fame Day is given to the Parties aforefaid at the fame Place.

And now at this Day, to wit, (the first Day of the Term the Judgment is entered) in this fame Term until which Day the aforefaid *C. D.* hath Licence to imparle to the Bill aforefaid, and then to answer the fame before our Lord the King at *Westminfter*, came the aforefaid *A. B.* by his Attorney aforefaid, and prays that the aforefaid *C.* may answer to his Declaration aforefaid, and the aforefaid *C.* although at that Day solemnly called, did not appear, nor faid any thing in Bar or Preclufion of the Aétion aforefaid, of the aforefaid *A.* whereby the fame *A.* remains againft the faid *C.* without defence there-
The like, of another Term, with an Impar lance.
H 4 of;

The Clerk's

of: — for that it is considered, —
and so on as in the next before to
the End.

And you are to observe upon these two last Interlocutory Judgments, Writs of Inquiries are to be executed by the Sheriff of the County where the Action is laid, the Form of which see after; the Writ of Inquiry being returned by the Sheriff, a Rule for Judgment is to be given, for which you pay one Shilling and four Pence, and then getting the Inquisition stamped with a double half Crown Stamp, the Master will tax the Cost, and then the final Judgment is to be entered as before observed on the *Postea*.

*The like in
Ejectment with
a Release of the
Damages.*

And now at this Day (directly as in the next before unto) for that it is considered that the aforesaid *A. B.* should recover against the same *C.* his Term aforesaid yet to come of and in the Tenement aforesaid, with the Appurtenances, and also ought to recover his Damages against the said *C.* occasioned by the Trespass and Ejectment aforesaid: whereupon the aforesaid *A.* came *gratis* here into Court in his proper Person, and remitted to the said *C.* all Damages, Cost and Charges whatsoever,
which

which to the same *A.* could or ought to be adjudged; therefore the same *C.* is acquitted from those Damages, Cost and Charges, and thereof is without Day, and may depart the Court; and the aforesaid *A.* prays the Writ of our Lord the King to the Sheriff of the County of *Surry* aforesaid, to be directed of having made to him his full Possession of and in the Tenements aforesaid, with the Appurtenances, and it is granted unto him, returnable here before our Lord the King at *Westminster*, on *Wednesday* next after fifteen Days of *Easter* then next ensuing: the same Day is given to the Parties aforesaid at the same Place.

The Judgments before mentioned ^{Not to enter} without Tryal are chiefly entered up, ^{Judgment on} with the Defendant's Consent, by ver- ^{an old Warrant} tue of a Warrant of Attorney by him ^{without leave} given for that purpose, and you must ^{of the Court.} observe the Date of the Warrant of Attorney, which if above a Year standing, you must not enter it up without leave of the Court, which will be granted upon a Motion by Council, who must produce the Warrant of Attorney, and an Affidavit, that the Debt or some part of it, is still due, and that the Defendant is alive, and so forth, the
Form

The Clerk's

Form of which Affidavit may be as follows.

In the King's Bench.

Between W. S. Plaintiff, and E. F. Defendant.

The Affidavit of a Debt due and the Defendant alive, and so forth, to obtain leave to enter up a Judgment on an old Warrant of Attorney.

W. S. of ——— and T. N. of ———
severally make Oath, and first the said *W. S.* for himself saith, that the Sum of eighty and eight Pounds, part of the Debt secured to be paid unto him, this Deponent in and by one Bond or Obligation, in the penal Sum of one hundred and eighty Pounds, bearing date the eighth Day of *September*, in the Year of our Lord one thousand seven hundred and twenty nine, entered into by the said Defendant *E. S.* unto him this Deponent, (and for which this Deponent hath a Warrant of Attorney, executed by the said Defendant, bearing even Date with the Bond aforesaid, to confess Judgment thereon in this honourable Court) is still due and owing unto him this Deponent, and this Deponent further saith, that the aforesaid *E. S.* is now alive, as this Deponent verily believes, he this Deponent having seen and discoursed with the said Defendant, on the first Day of this Instant

Instant *May*, and the aforesaid *T. N.* for himself saith, that he was present and did see the said Defendant *E. S.* duely execute the Bond and Warrant of Attorney above mention'd; and further saith, that the Name *T. N.* subscribed as a Witness to the same Bond and Warrant of Attorney aforesaid, is of his this Deponents own proper Hand Writing.

The Form of a *Non Profs*, for not declaring before the end of the second Term, after the return of the *Latitat*; observe, the Term in which the Writ is returnable is to be accounted one.

Suffex, to wit, *H. M.* was Arrested by *A non Profs.* vertue of a Writ of our Lord the King of *Latitat*, before the King himself, issuing and directing to the Sheriff of the County of *Suffex*, returnable before our said Lord the King in the Term of *Easter*, at *Westminster*, on *Wednesday* next after fifteen Days of *Easter* now last past, to answer to *J. M.* in a Plea of Trespas, and the same *H. M.* at the same Day by *M. H.* his Attorney, according to the Form of the Statute in that case lately made and provided, appeared, and the before named *J. M.* in the same Court of our said Lord the King, before the King himself at *Westminster*, by his Bill

The Clerk's

For Cost 36s.
8d. signed the
first of June,
1732.

Bill or Declaration in any personal Action or Ejectment against him the said *H. M.* before the end of the Term of the *Holy Trinity* then next following, being the next Term after the Appearance of him the said *H. M.* at the Suit of the aforesaid *J. M.* hath not declared. — Therefore it is consider'd that the aforesaid *J. M.* take nothing by his Writ aforesaid, but that he be in *Mercy*. And it is further considered that the aforesaid *H. M.* should recover against the aforesaid *J. M.* thirty-six Shillings and eight Pence, for his Cost and Charges by him about his Defence in this behalf sustained, to the same *H. M.* by the Court of our said Lord the King now here, according to the Form of a Statute in such like Case lately made and provided, adjudged; and that the aforesaid *H. M.* may have execution thereof against the aforesaid *J. M.*

When the Plaintiff declares and does not seem willing to proceed, the Defendant having pleaded to Issue, may give a Rule for the Plaintiff's Attorney to reply and enter the Issue, or in default thereof a *Non Profs* may be signed, the master generally Writes the Rules, which he does *gratis* upon the side

side of the Declaration or Plea, which you carry to the Clerk of the Rules, who enters the same, for which he is to be paid one Shilling and four Pence; these *Non Proffes* are final Judgments, and are therefore to be stamped with a double half Crown Stamp.—— After you have wrote the Memorandum, Declaration and Plea, to —— And of this he puts himself upon the Country.—— You go on in the same Line.—— And the aforesaid *C.* *A Non Proff for not entering the general Issue.* prays that the aforesaid *A.* may Reply to the Plea of him the said *C.* upon which it is said to the same *A.* by the Court of our said Lord the King now here, that he should Reply to the aforesaid Plea, and enter the Issue in the Plea aforesaid, on *Wednesday* next after three Weeks of the *Holy Trinity*, on Peril incumbent; afterwards in this same Term before our said Lord the King at *Westminster*, came the aforesaid *C.* by his Attorney aforesaid, and the aforesaid *A.* although solemnly called did not appear, nor hath he replied to the Plea of the aforesaid *C.* nor is his Bill aforesaid against the same *C.* further prosecuted: Therefore — *as in the next above to the End.*

How

The Clerk's

How to enter Judgments without Trial, to wit, by Confession, saying nothing, or that I am not informed, in the Court of Common Pleas.

Upon the like Roll, as before mentioned, to be given out by the respective Prothonatories, you begin as before directed, with the Declaration, and go on with it verbally to the End; *and thereupon he brings his Suit*: Then beginning a new Line, enter the Judgment, (and observe that the other Judgments, where any Trial hath been had, is entered by the Clerks of the Judgments).

*Judgment by
Confession, for
Monies bor-
rowed.*

*Judgment
signed 7th of
November,
1732.*

And the aforesaid *C. D.* by *E. F.* his Attorney, comes and defends himself against the Force and Injury laid to his Charge, when, where, and in such a Manner as this Court shall think fit; and says, that he cannot deny the Action aforesaid, nor but that he owes to the same *A. B.* the said fifty Pounds, in Manner and Form as the aforesaid *A.* hath above declared against him; Therefore it is considered, that the aforesaid *A.* should recover against the said *C.* his Debt aforesaid, and his Damages occasioned by the detaining of that Debt to fifty Shillings, adjudged to the same *A.* by

English Tutor.

III

by his own Assent by the Court here:
And the aforesaid *C.* is in *Mercy.* *Mercy.*

If the Declaration is upon a Bond, ^{The like upon a Bond.} you must insert after the Words, *as the Court shall think fit*, — And says, that he cannot deny but that the Writing Obligatory aforesaid is the Deed of him the said *C.* nor but that he owes — and so on to the *End.* — *Mercy.*

And the aforesaid *C. D.* by *E. F.* ^{Saying nothing in Debt.} his Attorney, comes and defends himself against the Force and Injury laid to his Charge, when, where, and in such a Manner as this Court shall think fit; and says nothing in Bar or Preclusion of the Action of the aforesaid *A. B.* whereby the same *A. B.* remains against the said *C. D.* without Defence thereof: Therefore it is considered — *as above to the End.* — *Mercy.*

And the aforesaid *C. D.* by *E. F.* his ^{I am not informed.} Attorney, comes and defends himself against the Force and Injury laid to his Charge, when, where, and in such a Manner as this Court shall think fit; and the same Attorney saith, that he is not informed by the same *C.* his Master, of any Answer for the said *C.* to be given to the aforesaid *A.* in the *Plaint* aforesaid,
said,

The Clerk's

said, and no other saith any Thing thereof; whereby the same *A.* remains against the said *C.* without Defence thereof — Therefore it is considered, — *as above to, — Mercy.*

Upon these Judgments (which are generally) by Warrant of Attorney, it is said there is no need of an Original if the Plaintiff have a Release of Errors.

*Judgments
after a Year
and a Day
must be re-
vived by a
Scire Facias.*

And you are to observe, that where any Judgment (in what Action soever obtained) is above a Year standing, no Writ of Execution is to issue thereupon (unless Process has been continued) until such Judgment is revived by a Writ commanding the Sheriff of the County (where the Judgment is obtained) to warn the Defendant to appear at such a Return Day, to shew Cause why Execution should not go, pursuant to the Judgment recovered against him; and this Writ was formerly called a *Scire Facias*, — Cause to know; the Form whereof see afterward among the Writs, in the Alphabet under the Letter *S.*

*Saying nothing
in Case, in the
Common Pleas.*

And the aforesaid *C. D.* by *E. F.* his Attorney, comes and defends himself against the Force and Injury laid to his Charge, when, where, and in such a Manner

Manner as this Court shall think fit; and says nothing in Bar or Preclusion of the Action of the aforesaid *A.* whereby the same *A.* remains against the said *C.* without Defence thereof, for that the same *A.* ought to recover his Damages against the said *C.* by the Occasion of the Premises aforesaid, but because it is unknown what Damages the aforesaid *A.* hath sustained by the Occasion of the Premises aforesaid; therefore the Sheriff is commanded, that by the Oaths of good and lawful Men, he diligently enquire what Damages the aforesaid *A.* hath sustained, as well by Occasion of the Premises aforesaid, as also for his Cost and Charges by him expended about his Suit in this Behalf; and that he remit the Inquisition that he shall make to the Justices of our Lord the King at *Westminster*, from the Day of Saint *Michael* in three Weeks, under his Seal, and the Seals of them by whose Oaths he took that Inquisition.

In all Actions where the Debt is certain, (as those on Specialties are) if the Defendant neglects to plead in the Time limited by the Court, the Plaintiff may sign his Judgment by Default, which is a final Judgment; the Cost of
Final Judgment.

The Clerk's

*Interlocutory
Judgment,
what.*

Suit being given or taxed to him at that Time: But where the Debt or Damages are uncertain, the Judgment to be signed is called an Interlocutory Judgment, which is an intermedial Sentence before a final Decision, and then the Writ of Inquiry before mentioned is to be executed by the Sheriff, who impannels a Jury of twelve Men, who upon their Oaths, according to the Evidence given them, ascertain such Debt or Damages: But observe, 'tis necessary to give the same Notice to the Defendant's Attorney (or to the Defendant himself, if you affiled the Bail, or entered the Appearance for him according to the aforesaid Act) as to length of Time, as before mentioned, upon Trials, of the Time and Place of executing such Writ of Inquiry of Damages, in which both Courts are alike. The Form of the Notice may be as follows.

Williams against Williamson.

Master Moore,

Notice of executing a Writ of Inquiry.

Take Notice of executing a Writ of Inquiry of Damages in this Cause, on *Saturday* the One and Twentieth Day of this Instant *October*, between the Hours of Eleven and Twelve of the Clock

English Tutor.

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Clock in the Forenoon of the same Day,
at *Guildhall, London*, from

Sir,

• Your humble Servant,

October 13,
1732.

Thomas Higgins.

If in *Middlesex*, in the Term time, the Writs of Inquiry are generally executed at *Westminster*, the Sheriff keeping an Office in the Hall, just under, or at the Foot of the *King's Bench* Court, and then in your Notice say, — at the Court-house near *Westminster-Hall*, but if in the Vacation, then, as in other Counties, you must name the Time and Place as certain as possible, by particularizing the Name of the Person keeping the House, the Place where, and the Sign, as commonly called or known. *To be certain.* The Writ itself, which is to be on a treble Six-penny Stamp, in the *King's Bench*, is only sealed at the aforesaid Seal-Office, for which you pay Seven-pence; but in the *Common Pleas*, it is first signed by the Prothonotary, for which you pay one Shilling and Four-pence, and then 'tis to be sealed, for which you likewise pay Seven-pence: The Forms follow.

The Clerk's

The Form of the Writ of Inquiry in the King's Bench.

*A Writ of In-
quiry in the
King's Bench.*

George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, to the Sheriffs of London, Greeting: Whereas *John Williams*, late in our Court before us at *Westminster*, by Bill without our Writ, impleaded *Robert Williamson*, in the Custody of our Marshal of the *Marshalsey* being, for that, to wit, that whereas the aforesaid *Robert*, on the second Day of *August*, in the sixth Year of our Reign, at *London* aforesaid, to wit, in the Parish of *Saint Mary of the Arches*, in the Ward of *Cheap*, was indebted to the same *John* in fifty Pounds of lawful Money of this Realm, for such a Sum of Money of him the said *John*, by him the said *John* to the same *Robert*, at the special Instance and Request of him the said *Robert*, before that Time lent and accommodated; and thereupon being so indebted — *and so on to the End of the Declaration.* — And thereupon he brings his Suit. And there was likewise Process in our same Court before us, that the aforesaid *John* ought to recover his Damages against the

the same *Robert*, occasioned by his the said *Robert* not performing of his Promises and Assumptions aforesaid ; but because it was unknown to our Court before us what Damages the same *John* by the Occasion aforesaid hath sustained, therefore we command you, that by the Oaths of twelve good and lawful Men of your Bailiwick, you diligently enquire what Damages the aforesaid *Robert* hath sustained, as well by the Occasion of the Premisses aforesaid, as also for his Cost and Charges by him expended about his Suit in this Behalf ; and that you remit the Inquisition you take before us at *Westminster*, on *Monday* next after three Weeks of Saint *Michael*, under your Seals, and the Seals of them by whose Oaths you take that Inquisition ; and that you then have there this Writ. Witness *Robert* Lord *Raymond*, at *Westminster*, the twenty eighth Day of *June*, in the sixth Year of our Reign. *Ventris.*

The Form of the Writ of Inquiry in the Common Pleas.

George the Second, by the Grace of God, of *Great Britain, France and Ireland*, King, Defender of the Faith, to the Sheriff of the County of *Middlesex*, Greeting: Whereas *Richard S.* late *A Writ of Inquiry in the Common Pleas.*

The Clerk's

late of *Westminster*, in the said County, Yeoman, was attached to be in our Court, before our Justices at *Westminster*, to answer to *George T.* of a Plea, why with Force and Arms in him the said *George*, at *Westminster*, he made an Assault, — *and so on to the Words* — and hath Damage to the Value of Ten Pounds, as it is said, and there is Process in our same Court, that the aforesaid *George T.* ought to recover his Damages, occasioned by the Premises; but because it is unknown what Damages the aforesaid *George* hath sustained, we command you, that by the Oaths of good and lawful Men of your County, you diligently enquire what Damages the same *George* hath sustained, as well by the Occasion of the Premises aforesaid, as also for his Cost and Charges by him expended about his Suit in this Behalf; and that you send the Inquisition you take before our Justices at *Westminster*, from the Day of Saint *Michael* in three Weeks, under your Seal, and the Seals of them by whose Oaths you take that Inquisition, and this Writ. Witness *Robert Eyre*, at *Westminster*, the twenty-eighth Day of *June*, in the sixth Year of our Reign.

Note. In these Writs, when they are upon Promises, you say, *occasioned by*
the

the Defendant's not performing his Promises and Assumptions aforesaid; when otherwise, you say, occasioned by the Premises. And the Writ running in the King's Name in the Declaration Part, you say, in the sixth Year of our Reign, instead of the sixth Year of the Reign of our Lord the King.

In *London* you pay the Sheriff one Pound seven Shillings and Four-pence for executing this Writ of Inquiry, and Four-pence for every Witness sworn, out of which he pays the Jury and Serjeant at Mace attending thereon. In *Middlesex*, and most other Counties, you pay one Pound ten Shillings and Six-pence. The Writ being executed and returned by the Sheriff, you give a Rule for Judgment in the *King's Bench* with the Clerk of the Rules, to whom you pay one Shilling and Four-pence; and in the *Common Pleas* (though you do not give a Rule, yet) you stay as long before you sign the final Judgment, to wit, to the *quarto die post* (the fourth Day after) the Defendant, in all Cases, having four Days to move in Arrest of Judgment; after which, nothing being moved or said to the contrary, you are to stamp the Inquisition with a double half Crown Stamp, and procure the

*Directions as to
Time of
signing Judg-
ments.*

The Clerk's

Cost to be taxed by the Master, to whom you pay two Shillings and Sixpence; and then the final Judgment must be entered on the same Roll as your Proceedings are, as before directed concerning the *Postea*, the Forms whereof in the *King's Bench* are here inserted, and in the other Court they are much the same; Mr. *Tullie* enters the one, and the respective Clerks of the Judgments the other, as before observed: And in the *Common Pleas*, the Associate always endorses the *Postea* for you; therefore not being quite so necessary to be mentioned, I shall only set forth three or four, to shew you the Manner of them, which it may be very proper for you to be acquainted with; and first for the Entry of the Inquisition and final Judgment thereon, you begin continuing the Line, — after the Words — The same Day is given to the Parties afore said, at the same Place. — At which Day, before our Lord the King, at *Westminster*, came the afore said *A. B.* by his Attorney afore said, and the Sheriffs, to wit, *Samuel Russel* and *Thomas Pindar*, Esquires, Sheriffs of the City of *London*, (by Virtue of a Writ thereof to them directed) returned a certain Inquisition indented, taken before them at *Guildhall*, in the said City of *London*,
situate

*The Entry of
the Inquisition,
and final Judgment
on a Writ
of Inquiry.*

fituate in the Parish of Saint *Lawrence* in the *Old Jury*, in the Ward of *Cheap*, in the same City, on the fourth Day of *August*, in the sixth Year of the Reign of our said Lord the King, by the Oaths of twelve good and lawful Men of their Bailiwick, whereby it is found that the aforesaid *A. B.* hath sustained Damages occasion'd by the Premisses aforesaid, besides his Cost and Charges by him expended about his Suit, to fifty-five Pounds eight Shillings, and for his Cost and Charges to twenty-seven Shillings and four Pence: Therefore it is considered, that the aforesaid *A. B.* shall recover a-^{Judgments}gainst the aforesaid *C. D.* his Dama-^{signed the 30th}ges aforesaid, by the said Inquisition^{of October,} 1732. above found, and also seven Pounds four Shillings and eight Pence, for his Cost and Charges by him about his Suit in this behalf expended, to the same *A. B.* by the Court of our Lord the now King at his request is here adjudged of increase; which said Damages in the whole amount unto sixty-four Pounds, and the aforesaid *C. D.* is in *Mercy.*

Sometimes (especially upon a *Cesset* Execution) to prevent the Expence of Executing a Writ of Inquiry, the Defendant

The Clerk's

pendant will acknowledge the Damage with Cost of Suit, which may be entered as follows; to wit.

(Cognovit Actionem) He acknowledged the Action, in an Action of Trespass upon the Case, to prevent the Expence of a Writ of Inquiry.

And the aforesaid *D.* by *J. E.* his Attorney, comes and defends himself against the Force and Injury laid to his Charge, when, where, and in such a Manner as this Court shall award, and says, that he cannot deny the aforesaid Action of the aforesaid *B.* nor but that he the said *D.* did assume upon himself in Manner and Form as the aforesaid *B.* above declares against him; nor also, but that the said *B.* hath sustained Damages by Occasion of not performing of the Promises and Assumptions aforesaid, to twenty Pounds, as the aforesaid *B.* in above declaring does suppose. And hereupon the aforesaid *B.* prays Judgment; and those Damages so acknowledged, to be adjudged to him, together with his Costs and Charges by him about his Suit expended in this particular. Therefore it is considered that the aforesaid *B.* do recover against the above-named *D.* his Damages aforesaid, to the aforesaid twenty Pounds, in Form aforesaid above acknowledged, and also six Pounds for his Costs and Charges by him about his Suit in this behalf expended, to the same *B.* by the Court of our said

*Judgment sign-
on the sixth of
May, 1732.*

said Lord the now King, at his request is here adjudged of Increase; which said Damages in the whole amount unto twenty-six Pounds; and the aforesaid D. is in *Mercy*.

Mercy.

The Entry of the Postea on the Record for the Plaintiff in Case upon Promise, where the Defendant makes Default.

Afterwards, at the Day and Place Postea, where the Defendant makes Default within contained, before the Right Honourable *Robert Lord Raymond*, our Lord Chief Justice within written, there being associated unto him *John Smith*, Gentleman, by Form of the Statute in that Case made and provided, came the within named *A. B.* by his Attorney within contained; and the within mentioned *C. D.* altho' solemnly called, did not appear, but made Default; therefore let the Jury within written be taken against him by Default, and the Jurors of the Jury whereof mention is within made, being demanded, likewise came, and being elected, tried and sworn to speak the Truth of the Matters within contained, do say upon their Oaths, that the aforesaid *C. D.* did make such Promise, in the Manner and Form as the aforesaid

The Clerk's

saïd *A. B.* hath within complained against him; and they assess the Damages of him the saïd *A. B.* by occasion of the not performing of the Promise and Undertaking within written, to forty Pounds, besides his Cost and Charges, by him about his Suit in this behalf expended; and for his Cost and Charges to — Therefore, — So far only is entered upon the Back of the Record; the rest is the final Judgment entered on the Roll.

The Entry of the Postea, for the Plaintiff, when the Defendant appears, and does not make Default.

*Postea, where
the Defendant
appears.*

Afterwards, at the Day and Place within contained, before the Right Honourable *Robert Lord Raymond*, our Lord Chief Justice within written, there being associated unto him *John Smith*, Gentleman, by Form of the Statute in that Case made and provided, came as well the within named *A. B.* as the within written *C. D.* by their Attornies within contained, and the Jurors of the Jury whereof, — *and so on as before to the End.* — Therefore.

The

The Entry of the Postea for the Defendant, where a Verdict passes for him.

Afterwards — and so on as before. — Do say upon their Oaths, Postea, where the Verdict is found for the Defendant. that the aforesaid *C. D.* did not make such Promise in Manner and Form as the aforesaid *A. B.* by pleading hath within alledged.

If the Issue on which your Cause is tried is an old Issue, it must be continued on the Roll, before this *Postea* is entered, after which the final Judgment is to be entered; but the Clerks of the Treasury take care of these Matters when they enter the final Judgments; which having lead you to, by degrees, as well with as without Trial, I shall now give you some Account of the promised Executions against the Body, the Goods, and the Lands of the Defendant, either of which being duly executed, and returned, is the End of your Law Suit. Continuances to be entered on the Roll.

Of Execution against the Body.

This Writ of Execution against the Body, was formerly (why not now) Executions are of two Sorts. called a *Capias ad Satisfaciendum*, but

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but we should be conformable if we knew how, *Ergo*, Take you the Body to satisfy. Executions are said to be of two sorts, the one final, the other *quousque*, until.

Final.

1. An Execution final, is when the Defendant's Lands are Extended, or his Goods Sold and delivered to the Plaintiff, who accepting this in Satisfaction, ends the Suit.

*Quousque,
Until.*

2. That an Execution with a *quousque* and not final, is in the Case of a *Capias ad Satisfaciendum*, where the Body is taken to the intent to satisfy the Plaintiff, yet is no Satisfaction, but a Pledge for the Debt; neither is the Parties Imprisonment absolute, but untill he doth satisfy, or agree with the Plaintiff.

Ca. Sa. a judicial Writ.

The take you the Body to satisfy, or *Capias ad Satisfaciendum*, is a judicial Writ, and lies where a Man hath recovered in a personal Action, any Debt or Damages in the King's Court, directed to the Sheriff, to command him to take the Body of the Person of the Defendant condemned in Debt, and to put him in Prison, 'till satisfaction made. *Dalton*. 138.

It

It lies against such Persons against ^{Where it lies,} whom a *Capias* doth lie in the Commencement of a Suit, as Debt Account, Action on the Case, Trespass with Force and Arms, Annuity, and Cove- ^{and} nant; but it lies not for a Recovery of Damages in a real Action.

Nor doth it lie against an Earl, Duke, or Baron, or their Wives, except in ^{Where not.} some special Cases; nor against an Heir, or Executor, except in false Pleading. *Dalt.* 143. 3. Co. 11. *Dyer* 208.

If one be in Execution upon a *Ca-* ^{Where no other Execution.} *pias ad Satisfaciendum*, which is returned, no other Execution can be sued against him, his Lands and Goods; *vide Stat.* 21. *Fac.* 24. But it is otherwise after his Death.

If one recovered Debt against *B.* ^{Where another,} and levy part of the Debt by a *Fieri Facias*, which is returned, yet he may take the Body of *B.* the Defendant, by a *Capias ad Satisfaciendum* for the Residue, 4 *Fac. Carter and Coppin* in the *King's Bench*.

If the Defendant be in Execution by ^{And what may issue after a Ca. Sa.} a *Capias ad Satisfaciendum* and Dies, the Plaintiff may have a new Execution ^{Stat 21. Fac.} by *Elegit* or *Fieri Facias*; for that, by ²⁴ the Statute of 21 *Fac.* 24. it is provided, that the Party or Parties at whose Suit any Person shall stand charged in Execution

The Clerk's

Execution for Debt or Damages recovered, their Executors, or Administrators, may after the Death of the Person so charged, and dying in Execution, lawfully Sue forth a new Execution against the Land, Tenements, Goods, and Chattles, of the Person so deceased, in like manner as if he had never been taken in Execution.

Note, By the Act of the third of G. C. 15. the Sum due must be marked on the Back of the *Capias ad Satisfaciendum*, before it be delivered to the Sheriff to be executed; for which Sum only he shall have Poundage.

*The Form of a Capias ad Satisfaciendum
(or take you the Body to satisfy,) in
Debt.*

*A Ca. Sa. in
Debt.*

George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith; to the Sheriff of the County of Bucks, Greeting: We command you that you take O. B. of Stow in your County, Smith, otherwise called O. B. of — (litterally as he is called in your Proceedings,) if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before us at Westminster, on Wednesday next after three

English Tutor.

125

three Weeks of the Holy Trinity, to satisfy *A. B.* of One hundred Pounds Debt, and also of Fifty three Shillings, for his Damages which he hath sustained, as well by occasion of detaining of that Debt, as also for his Cost and Charges by him expended about his Suit in that behalf, whereof he is convicted, as appears to us upon Record ; And that you then have there this Writ. Witness *Robert Lord Raymond*, at *Westminster*, the Ninth day of *June*, in the Fifth Year of our Reign.

Ventris.

George, — *as before* — To Satisfy *A. B.* of Twenty Pounds for his Damages which he hath sustained, as well by occasion of the not performing certain Promises and Assumptions to him lately made by the said *O. B.* as also for his Cost and Charges by him expended — *as before, to the End.*

Ventris.

George — *as above* — to Satisfy *A. B.* of Forty Pounds for his Damages which he hath sustained, as well by occasion of ascertain Trespas upon the Case to the same *A. B.* by him the said *O. B.* lately perpetrated, as also for his Cost and Charges

K

Charges

The Clerk's

Charges by him expended — as before to the End.

Ventris.

A Ca. Sa. for the Defendant.

George — (as before) We command you, that you take *A. B.* Esquire, if he may be found in your Bailiwick, and safely keep, him so that you may have his Body before us at *Westminster*, on *Monday* next after three Weeks of *Saint Michael*, to satisfy *O. B.* of nine Pounds which was adjudged in our Court before us to the said *O. B.* according to the Form of the Statute in that Case lately made and provided, for his Cost and Charges by him expended about his Defence in a certain Action of Trespass upon the Case, at the Suit of the aforesaid *A. B.* whereof he is convicted, as appears to us upon Record; and that you then have there this Writ. Witness *Robert Lord Raymond*, at *Westminster*, the Twenty Eighth day of *June*, in the Sixth Year of our Reign.

Ventris.

The Ca. Sa. is only sealed.

The aforesaid Writs of Execution are made on a treble Six-penny Stamp, and are to be sealed at the beforementioned Seal-Office, for which you pay Sevenpence each; and observe, the *Capias ad Satisfaciendum*, or *Take you the Body to*

Sa-

Satisfy, must be first sued out in the County where the Judgement is obtained; and if the Defendant cannot be taken there, you must get it returned by the Sheriff of the County, that the Defendant is not to be found in his Bailiwick; whereupon you may have an attested Writ into any other County, where you imagine the Defendant secrets himself, the Form whereof follows, and is to be on the like Stamp, and only sealed as the former Writ.

The Form of a Testatum Capias ad Satisfaciendum, (Attested or take you the Body to Satisfy.) *in Debt.*

George the Second, by the Grace of God of *Great Britain, France, and Ireland*, King, Defender of the Faith, to the Sheriff of the County of *Berks*, Greeting. Whereas we lately commanded our Sheriff of our County of *Bucks*, that he should take *O. B.* of — if he might be found in his Bailiwick, and keep him safely, so that he should have his Body before us at *Westminster*, at a certain Day now past, to satisfy *A. B.* of One Hundred Pounds Debt, and also of Fifty-three Shillings, for his Damages which he hath sustained, as well by occasion of detaining of that Debt, as also for his Cost and Charges by him

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expended about his Suit in that behalf, whereof he is convicted as appears to us upon Record; and our said Sheriff of the County of *Bucks*, at that Day returned to us that the aforesaid *O. B.* is not found in his Bailiwick; whereupon on the behalf of the said *A. B.* it is sufficiently attested in our Court before us, that the aforesaid *O. B.* does run up and down and secret himself in your County; Therefore we command you, that you take him, if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before us at *Westminster*, on *Monday* next after three Weeks of *Saint Michael*, to satisfy to the same *A. B.* of his Debt and Damages aforesaid, in form aforesaid; and that you then have there this Writ. Witness *Robert Lord Raymond*, at *Westminster*, the Twenty Eighth day of *June*, in the Sixth Year of our Reign.

Ventris.

A Testatum (or Attested) Ca. Sa. in Case, upon promise, and in Case generally.

George ——— (*as before to* ———)
 A certain Day now past to satisfy *A. B.* of Twenty Pounds for his Damages which he hath sustained, as well by occasion of the not performing certain Promises and Assumptions to him lately made by the said *O. B.* (*or in Case generally say*) As well by occasion of a certain Trespass upon

upon the Case to the same *A. B.* by him the said *O. B.* lately perpetrated ; — as also for his Cost and Charges by him expended about his Suit in that behalf, whereof he is convicted, as appears to us upon Record ; and our said Sheriff of the County of *Bucks* at that Day returned to us, that the aforesaid *O. B.* is not found in his Bailiwick ; whereupon — *as in the next above to the Words* — To satisfy the aforesaid *A. B.* for his Damages aforesaid ; and that you then have there this Writ. Witness — *(to the End.)*

Ventris.

These Writs in the *Common Pleas* are much the same, differing but little in the Form or Phrase ; the Return is, *Before our Justices at Westminster*, instead of *Before us*, and the like, which are easy translated from the *Præcedents* common enough in our old Books : I shall therefore proceed to the Execution against the Goods heretofore called a *Fieri Facias* ; Cause you to be made of the Goods. —

Of Execution, against the Goods.

This *Fieri Facias*, or, Cause you to be made of the Goods, is likewise a Ju-^{Fi. Fa. a Judicial Writ.}

The Clerk's

For what it lies.

dicial Writ, lying for him who hath recovered Debt or Damages, and is directed to the Sheriff, commanding him to make or levy the same of the Defendant's Goods; and it lies within a Year and Day, as before observed; but after the Year there must be a *Scire Facias*, to revive the Judgment, before this or any Execution can issue. *Dalt.* 145.

Against Goods and Chattles only.

This Writ, is only against the Goods and Chattles of the Defendant; to wit, Leases for Years, Corn growing or sown upon the Land, or moveable Goods, as Cattle, Corn in the Barn, Household-Goods, Money, Plate, and Apparel, *Co. 1 Inst. B.* 290. 63. *Co.* 12.

Not Pawned.

Goods pawned shall not be taken in Execution for the Debt of him which pawned them, during the Time they are pawned. *Kitchin* 226.

Nor annexed to the Freehold.

The Sheriff upon a Writ of Execution, may not seise, and sell a Fornace annexed to the Freehold; for this would be waste in the Lessee, 37 *Eliz.* in the *Common Pleas*, *Day* and *Austin.* *Dal.* 520.

Nor Goods Ecclesiastical

The Goods Ecclesiastical of Clergymen are not to be taken by the Sheriff, but by the Bishop, upon a *Levari Facias*, Cause you to be levied, on a Recognizance. 2 *Inst.* 472.

Nor Goods sold depending the Action.

If one sell any Goods to another, depending an Action against him, these Goods

Goods afterwards shall not be put in Execution; for they were lawfully bought, (if *Bona Fide* and for a valuable consideration): But if a *Fieri Facias* be directed to the Sheriff to make Execution of Goods, and after the Teste, Date, or Witness of the Writ, and before the Sheriff executes it, the Party sells his Goods *Bona Fide*, they might have been taken in Execution; but 'tis otherwise now by the Statute of Frauds and Perjuries. *Cro. El.* 174. *Mo.* 21. *N.* 72.

By the Statute of Frauds and Perjuries, no Writ of Execution shall bind the Property of the Goods, but from the Time of its Delivery to the Sheriff, Under-Sheriff or Coroners, who upon receipt thereof (without Fee) shall endorse on the Back thereof the Day of the Month and Year when they received it.

By the Statute 8. *A. C.* 17. after the first Day of *May*, 1710. no Goods or Chattles, being on Messuages, Lands, or Tenements leased for Life, Years at will or otherwise, shall be taken in Execution, unless the Party, at whose Suit the Execution is sued out, shall before the removal of the Goods pay to the Landlord one Year's Rent; and the Sheriff or other Officer shall levy and pay to the Plaintiff, as well the Money

Goods are only bound from the delivery of the Writ, to the Sheriff.

Sheriff, to levy a Years Rent for the Landlord.

The Clerk's

so paid for Rent, as the Execution Money. Proviso, not to prejudice the King in levying Debts, Fines, or Forfeitures.

Death of the Defendant does not prevent Execution.

If the Party dies after the Writ of Execution awarded, and before it be served, the Sheriff may serve it of the Goods in the Hands of the Executor; for by the Execution awarded (and delivered to the Sheriff) the Goods are bound, and the Sheriff need not take Notice of his the Defendant's Death. *Cro. Eliz.* 181. *Parker and Mosse*, 1 *Leon.* 144, 145. *Mesme Case.*

Judgment may be entered after Defendant's Death.

So where one has a Warrant of Attorney to confess a Judgment, of such a Term, or any subsequent Term, and before the Judgment is entered the Defendant dies either in the Term or the Vacation, yet this Judgment may be entered immediately, and shall be accounted a Judgment from the first Day of the Term it is entered of, which will be, before the Defendant's Death; and the Time of signing the Judgment (which, as before observed, is to be entered on the Side or Margin of the Roll) only refers to the Time the Defendant's Estate shall be bound by, as to Purchasers, and upon such Judgment, Execution may be immediately issued, notwithstanding the Defendant's Death as aforesaid.

And Execution taken out.

And

And now I am speaking of Deaths, *Actions not abated by Death since the 8 and 9 Will. III.* give me Leave to observe, that at Common Law, by the Death or of the Plaintiff or Defendant the Suit abated; but by the 8 and 9 of *Will. III. Chap. 11.* Sections the 9 and 10. this Point is altered, and the Death being suggested on the Roll, the Action may be proceeded in, if it might have been originally prosecuted by or against an Executor or Administrator; the Abstract of which Act, see afterwards.

The Form of a Fieri Facias (or Cause you to be made) in Debt.

George the Second, by the Grace of *A Fi. Fa. in Debt.* God, of Great Britain, France and Ireland, King, Defender of the Faith, to the Sheriff of *Essex*, Greeting. We command you, that of the Goods and Chattels of *C. D.* of —, otherwise called *C. D.* of —, in your Bailiwick, you cause to be made as well fifty Pounds Debt which *A. B.* hath lately recovered in our Court before us against the same *C. D.* as also sixty three Shillings which was adjudged to the aforesaid *A. B.* in our same Court, for his Damages which he hath sustained, as well by occasion of detaining of that Debt, as also for his Cost and Charges by

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by him expended about his Suit in that behalf, whereof he is convicted, as appears unto us upon Record; and have you that Money before us at *Westminster*, on *Wednesday* next after three Weeks of the Holy Trinity, to render unto the aforesaid *A. B.* for his Debt and Damages aforesaid; and that you then have there this Writ. Witness, *Robert Lord Raymond*, at *Westminster*, the ninth Day of *June*, in the fifth Year of our Reign.

Ventris.

*A Fi. Fa. in
Case, upon Pro-
mise.*

George — (as before to) —
which *A. B.* hath lately recovered in our Court before us against the same *C. D.* for his Damages which he hath sustained, as well by the occasion of the not performing certain Promises and Assumptions to him lately made by the aforesaid *C. D.* as also for his Cost and Charges by him expended, — *as before to the End*, leaving out his Debt, and only say, for his Damages aforesaid.

Ventris.

*A Fi. Fa. in
Case, generally.*

George — (as before to) —
which *A. B.* hath lately recovered in our Court before us against *C. D.* for his Damages which he hath sustained as well

well by the occasion of a certain Trespas upon the Case to the same *A. B.* by him the said *C. D.* lately perpetrated, as also for his Cost and Charges by him expended — *as before to the End.*

Ventris.

George — (as before) — We ^{*A. Fi. Fa. for the Defendant.*} command you, that of the Goods and Chattels of *A. B.* Gentleman, in your Bailiwick, you cause to be made Eleven Pounds, which was adjudged in our Court before us to the said *C. D.* according to the Form of the Statute in that Case lately made and provided, for his Cost and Charges by him expended about his Defence in a certain Action of Debt, at the Suit of the aforesaid *A. B.* whereof he is convicted, as appears to us upon Record, and have you that Money before us at *Westminster*, on — next after —, to render to the aforesaid *C. D.* for his Damages aforesaid; — *and so on, as before to the End.*

Ventris.

George — (as before) — We ^{*A. Fi. Fa. against an Administratrix.*} command you, that of the Goods and Chattels which were belonging to *C. D.* at the Time of his Death, now being in the Hands and Custody of *E. D.* Widow

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Widow and Administratrix of all and singular the Goods and Chattels, Rights and Credits which were belonging to the aforesaid *C. D.* at the Time of his Death, who died intestate, in your Bailiwick, you cause to be made five hundred Pounds, which *A. B.* — (as before) — whereof he is convicted, as appears to us upon Record, if she hath so much in her Hands; and if she hath not so much in her Hands; then the Damages aforesaid of the proper Goods and Chattels of her the said *E. D.* and have you that Money before us, — *and so on, as before, to the End.*

*Upon a Nulla
Bona returned,
an attested
Writ may issue.*

This Writ of Execution against the Goods, like that against the Body, is to have the same Stamp impressed, and is only to be sealed, and must be sued out likewise in the County where the Judgment is obtained, and upon the Sheriff's Return of a *Nulla Bona*, that is, that the Defendant hath no Goods and Chattels in his Bailiwick, an attested Writ may be issued into any other County, which is to be on the like Stamp, and only sealed: The Form is as followeth.

The

*The Form of a Testatum Fieri Facias,
(or attested cause you to be made of
the Goods) in Debt.*

George the Second, by the Grace of ^{A Testatum,}
God of Great Britain, France and ^{or attested}
Ireland, King, Defender of the Faith; ^{Fieri Facias in}
to the Sheriff of the County of *Hertford*, ^{Debt.}
Greeting. Whereas we lately com-
manded our Sheriff of our County of
Essex, that he should of the Goods
and Chattels of *C. D.* of —, other-
wise called *C. D.* of —, in his
Bailiwick, cause to be made as well
twenty Pounds and fifteen Shillings
Debt, which *A. B.* hath lately reco-
vered in our Court before us against
the same *C. D.* as also sixty three Shil-
lings, which was adjudged to the afore-
said *A. B.* in our same Court, for his
Damages which he hath sustained as
well by occasion of detaining of that
Debt, as also for his Cost and Charges
by him expended about his Suit in that
behalf, whereof he is convicted, as ap-
pears to us upon Record; and that he
should have that Money before us at
Westminster, at a certain Day now past,
to render unto the aforesaid *A. B.* for
his Debt and Damages aforesaid; and
our said Sheriff of our said County of
Essex,

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Essex, at that Day returned to us, that the aforesaid *C. D.* had no Goods or Chattels in his Bailiwick, whereof he could make that Money; whereupon, on the Behalf of the said *A. B.* it is sufficiently attested in our Court before us, that the aforesaid *C. D.* hath Goods and Chattels sufficient in your Bailiwick, whereof you may make the Money aforesaid; therefore we command you, that of the Goods and Chattels of the aforesaid *C. D.* in your Bailiwick, you cause to be made the aforesaid twenty Pounds and fifteen Shillings for the Debt, and sixty three Shillings for his Damages aforesaid, and have you that Money before us at *Westminster*, on *Monday* next after three Weeks of Saint *Michael*, to render unto the aforesaid *A. B.* for his Debt and Damages aforesaid, in Form aforesaid; and that you then have there this Writ. Witness, *Robert Lord Raymond*, at *Westminster*, the twenty eighth Day of *June* in the sixth Year of our Reign.

Ventris.

Of Execution against the Land.

*The Nature of
an Elegit, (or
Election) as to
Lands, or
Goods.*

An *Elegit* (he hath chosen or made his Election) is also a judicial Writ given by the Statute *W. II. C. 18.* either upon a Recovery

Recovery for Debt or Damages, or upon a Recognizance in any Court. By this Writ the Sheriff shall deliver to the Plaintiff all the Chattels of the Debtor, (except his Oxen and Beast of the Plough) and a Moiety of his Lands; and this must be done by Inquest taken by the Sheriff, for the Valuation of the Goods and Lands ought to be first found by the Inquisition of a Jury. The aforesaid Statute of *W. 2. c. 18.* gives the *Elegit*, (he hath elected) so that in *Elegit* the Sheriff may take in Execution the Moiety of the Lands of the Conizor, and all his Goods and Chattels, (except as aforesaid) and was to deliver them to the Conizee, or he who recovers upon a reasonable Extent or Price, until the Debt be satisfied, and the Sheriff shall deliver him the Seisin of the Land; and he is called Tennant by *Elegit* (by Election) and shall do no Waste. 3 Co.

12. 4 Rep. 47. Dalt. 133.

If you execute an *Elegit* (he hath Being executed and filed, bars from other Executions. elected) and file it, you have made your Election, and are barred from taking out any other Execution from that Judgment afterwards, unless evicted. See the Statute 32 H. 8. c. 5. and see after.

And in Trinity Term, 15 Jac. in After Elegit entered of Record, may not resort to another Execution. the King's Bench, Andrews and Cope's Case, if a Man pray an *Elegit*, and this is

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is entered of Record, he may not after resort to any other Writ of Execution; because he has made his Election.

Otherwise if returned Nihil.

Yet if a Man sue forth an *Elegit*, and this is returned *Nihil*, within the Year, he shall have a *Capias ad Satisfaciendum*, or a *Fieri Facias*, within the Year; and this is the common Course to have it within the Year after the Prayer.

Or Goods only taken in Execution.

And if a Man sue forth an *Elegit*, and upon this certain Goods are taken in Execution, and sold for Part of the Debt, and this is returned; yet he may have a *Capias* afterwards, for now 'tis in Effect but a *Fieri Facias*, no Land, being extended, so that this is but a *Nihil* for the Land. *Hob. p.*

The Elegit, as to Goods, is only as a Fieri Facias.

The *Elegit* as to Goods is in Effect but a *Fieri Facias*; and therefore, if there be no Lands, and Execution be upon Goods, and they are not sufficient, he may have a *Capias*. It is otherwise if Lands be extended.

And may be sued in any County.

This Writ of *Elegit* is not (like the *Capias ad Satisfaciendum* and *Fieri Facias*) confined at first to the County where the Judgment is obtained, but may be sued out in any County the Plaintiff pleases; and for this Reason, when you have obtained a Judgment at the latter end of a Term, and cannot get

get a *nulla bona* returned before the first Return of the next Term, so as to warrant an attested Writ, you may, without staying for that Formality, sue forth this Writ of *Elegit* immediately, which entirely answers the End of a *Fieri Facias*.

All the Goods and Chattels, in which ^{What may be extended.} are included Leases for Years, shall be extended, (except Oxen and Beast of the Plough) and the Moiety of the Lands as aforesaid.

An Annuity certain is extendible by ^{Annuity.} *Elegit*. *Cro. Jac.* 78. *York* and *Twin's Case*.

Lands in ancient Demesne may be de- ^{Ancient Demesne.} livered in Execution by the Sheriff, by Force of an *Elegit* out of the King's Court; for the Land itself was never put directly in Plea in the King's Court. *5 Rep. Alden's Case. Hob. 47. Cox and Barneby. Dalt. 532.*

Lands sold after Judgment, are liable ^{Lands sold.} to that Judgment.

A Rent Seck, where there is not any ^{What may not be extended.} Reversion, cannot be delivered in Exe- ^{A Rent Seck.} cution *ut liberum Tenementum*, as a Freehold. *Cro. Eliz. 656. Walshal and Heath's Case.*

If the Lands descend to an Infant, ^{Infant.} the Sheriff shall cease to extend.

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L

Neither

Entailed Lands.

Neither are entailed Lands in the Hands of an Heir extendible upon an *Elegit* or Statute. *Dalt.* 532. *Cro. Jac.* 85.

Poundage.

The Sheriff, by the aforesaid Act of 3 G. c. 15. for executing of this Writ, is to take only twelve Pence for every Twenty Shillings of the yearly Value of the Estate, until it exceeds the Value of one hundred Pounds, and over that Sum six Pence only for every twenty Shillings.

The Form of an Elegit, or an Election, in Debt.

An Elegit (or Election) in Debt.

George the Second, by the Grace of God, of Great-Britain, France and Ireland, King, Defender of the Faith, to the Sheriff of the County of Hertford, Greeting. Whereas A. B. late in our Court before us at *Westminster*, by Bill, without our Writ, and by the Judgment of the same Court, hath recovered against C. D. one thousand Pounds Debt, and also sixty three Shillings for his Damages which he hath sustained as well by occasion of detaining of that Debt, as also for his Cost and Charges by him expended about his Suit in that Behalf, whereof he is convicted, as appears to us upon Record; and

and afterwards the aforesaid *A. B.* came into our Court before us, and elected to have delivered unto him all the Goods and Chattels of the aforesaid *C. D.* (except his Oxen and Beast of the Plough) and likewise a Moiety of all and singular the Lands and Tenements of the aforesaid *C. D.* in your Bailiwick, according to the Form of the Statute in that Case lately made and provided, until the Debt and Damages aforesaid shall be fully levied; Therefore we command you, that all the Goods and Chattels of the aforesaid *C. D.* in your Bailiwick (except his Oxen and Beast of the Plough) and likewise a Moiety of all the Lands and Tenements of the aforesaid *C. D.* in your Bailiwick, whereof the same *C. D.* on *Wednesday* next after three Weeks of *Easter*, in the fifth Year of our Reign, on which Day the Judgment aforesaid was rendered, or of which at any Time after he was seized, you cause to be delivered to the aforesaid *A. B.* at a reasonable Price and Extent, to hold to him, as his own proper Goods and Chattels, and also to hold the Moiety of the Lands and Tenements aforesaid as his, Freehold to him and his Assigns, according to the Form of the Statute aforesaid, until the Debt and Damages aforesaid shall be levied thereof; and how

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this our Writ you shall have executed, make known to us at *Westminster*, on *Wednesday* next after three Weeks of the Holy Trinity, under your Seal, and the Seals of those by whose Oath you shall have made that Extent and Appraisement, and that you then have there this Writ. Witness *Robert Lord Raymond*, at *Westminster*, the ninth Day of *June*, in the fifth Year of our Reign.

Ventris.

*Execution,
in Ejectment,
what.*

Having treated largely upon Ejectments, I shall now give you the Execution in that Action, which is or was called an *Habere Facias Possessionem*, or a Cause you to have the Possession, which lies after Judgment in Ejectment, whether by Verdict or *nil dicit*, by Default, and commands the Sheriffs to put the Plaintiff in actual Possession of his Lands and Tenements recovered.

When part.

When but part of the thing in Demand is recovered, the Sheriff must set it forth; but when all is recovered, he may give Possession of one Acre in the Name of the whole. *Palm.* 289.

*When all
is recovered.*

*If turned out
may have a
new Writ.*

And after this Writ is executed by the Sheriff, or voluntary delivery of the Possession, if the Party be turned out, by the Defendant's means, he may have

a new writ of Possession, upon motion in Court, and an Attachment against the Defendant, 1. *Keb.* 779. 785. *Ratcliff* and *Tate's* Case. But, if others enter after quiet Possession, he must have a new Action, or Restitution.

The Sheriffs in executing of this Writ, after a demand made to open the Door, may in case of refusal break it open, to deliver Possession of the House. Where the Sheriff may break open the Door.

Semain's Case 51. *R.* 91. *Dalt.* 532.

The Sheriff's Poundage for the Execution of this Writ, is by the Statute aforementioned, the same as for the *Elegit*, and that is the customary Way for other Executions.

The Form of an Habere Facias Possessionem, or a Cause you to have the Possession.

George the Second, by the Grace of God, of *Great Britain, France and Ireland*, King, Defender of the Faith; to the Sheriff of the County of *Surrey*, Greeting. Whereas *Roger P.* late in our Court before us at *Westminster*, by Bill without our Writ, and by the Judgment of the same Court, hath recovered against *Rice C.* his Term yet to come of and in three Messuages, two Cottages, two Gardens, five Acres

An Habere Facias Possessionem, (or Cause you to have the Possession.)

The Clerk's

Acres of Land, five Acres of Meadow, and five Acres of Pasture, with the Appurtenances, situate, lying and being at the Parish of *Croyden*, in the County aforesaid, which *John L.* Gentleman, on the first Day of *October*, in the sixth Year of our Reign, had demised to the aforesaid *Roger*, for a Term of Years not yet passed, to wit, from the last Day of *September* then last past, until the full End and Term of five Years, from thence next ensuing, and fully to be compleat and ended; by Virtue of which said Demise, the same *Roger P.* into the Tenements aforesaid, with the Appurtenances entered, and was in possession thereof, until the aforesaid *Rice C.* afterwards, to wit, the same first Day of *October*, in the sixth Year above-said, with Force and Arms, into the Tenements aforesaid, with the Appurtenances in and upon the Possession of him the said *Roger P.* entered, and him the said *Roger*, from his Farm aforesaid, his Term aforesaid, not yet past, ejected, expelled, and removed: Therefore we command you, that you cause the aforesaid *Roger P.* to have his possession of his Term aforesaid yet to come, of and in the Tenements aforesaid, with the Appurtenances; and how this our Writ you shall have executed, make known

known to us at *Westminster*, on *Monday* next after three Weeks of Saint *Michael*, and then have you there this Writ. Witness *Robert Lord Raymond*, at *Westminster*, the Twenty-eighth Day of *June*, in the Sixth Year of our Reign.

Ventris.

The *Elegit*, and the *Habere Facias* The Elegit and Hab. Fac. so be Signed and Sealed. *Possessionem*, are likewise to have a treble Six-penny Stamp impressed, and are to be Signed and Sealed; for Signing you pay One Shilling and Eight-pence each, and for Sealing Seven-pence each.

And now having led our Clerk, from the first or mesne Process, to the Execution or last Writ in the Law, (in the general Way) I shall here add some few things worthy his Notice, which often intervene, (in the special Way) and first,

Of Pleadings.

And here observe, the word *Plea* of Pleadings. (*Placitum*) is said to come of the French word *Ploid*, that is, *Lis*, (*Controversia*) and signifieth, in our Common Law, that which either Party alledgeth for himself in Court. *Co. Lit. fo. 303.* says they are called *Placita*, a *Placendo*,

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do, quia omnibus placent ; and Pleadings in their large and proper Sense, are said to signify, all the Sayings of the Parties to Suits or Actions, either real, personal or mixt, next after the Declaration ; as Bar, Replication, Rejoinder, Surrejoinder, Rebutter, Surrebutter, &c. Yet strictly speaking, a Plea is taken for the Answer or Defence of the Defendant, to the Declaration of the Plaintiff, and they are sometimes general, as the general Issues before-mentioned, and the like ; and sometimes Special ; and when there is special Pleadings in any Cause in the *King's Bench*, the Paper Book or Issue, or Demurrer, is to be made up by the Clerks of the Paper: The present Clerks are Mr. *Edward Benton*, and Mr. *Robert New*, who daily in Term time, attend in the *King's Bench*-Office from five of the Clock to six in the Afternoon, and are paid for copying every special Plea, Replication, Rejoinder, and other Pleadings, four-pence a Sheet (besides the Stamp-duty) and for Suggestions and Prohibitions eight-pence a Sheet ; and likewise eight-pence a Sheet for making up every Paper-Book, either Issue or Demurrer ; but observe, if a Demurrer be to a Declaration, and is general, that is without shewing special Cause of Demurrer, you
make

make up the Book your self, and deliver it to the Defendant's Attorney, who is to pay Four-pence a Sheet for it, (besides the Stamp-duty) and two Shillings for the Entry of his Demurrer. All special Pleas are to be signed by Council, and in the *Common Pleas* by the Serjeants at Law. The Attornies in this Court make up all their Proceedings themselves, whether General, or Special.

If the Defendant in any Action pleadeth a Plea, which is a sufficient Answer, and destroyeth the Action of the Plaintiff for ever, it is called a Bar. A Plea, called a Bar, and when.

And this is distinguished into Bar to common intent, or at large; and Bar Special, or Material.

Bar to common intendment is an ordinary and general Bar, which commonly disableth the Declaration, or shewing of the Plaintiff. General Bar.

Bar Special, is that which is more than Ordinary, and falleth out in the Case in question upon some special Circumstances of the Fact, as an Executor being sued for the Debt of his Testator, Pleadeth, that he hath nothing in his Hands, the Day of the Writ purchased; This is a good Bar at first sight, but the Case may be so, that more Goods may come to his Hands afterwards, which if the Plaintiff can show by way of Repliation, Special Bar.

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cation, then except the Defendant do al-
ledge a more special Plea, he must be con-
demned in the Action. *Plow. 26. Kitch.*
68. Co. Lit. 372.

Perpetual Bar.

*Temporary
Bar.*

Also some Bars are Peremptory, or
Perpetual, and will for ever overthrow
the Plaintiff's Action; and some are on-
ly Temporary, which do only at the
present overthrow, or interrupt the Ac-
tion, but afterwards cease or fail; as
(*Plene Administravit*) he hath fully
Administred, is a good Plea until it doth
appear that more Goods are come to
the Hands of the Executors. *Bro. Bar.*
23.

*After the Defendant's Plea, the Plain-
tiff's Replication is to follow.*

*Replication
what,*

The Replication then is an Excep-
tion of the second Degree made by the
Plaintiff to the Plea, or first Answer
made by the Defendant. *Co. Lit. 35.*
304.

*Must not vary
from the (Count
or) Declaration*

And great Care must be taken least the
Replication differ, or vary from the De-
claration. *Co. Lit. 303. 304.*

*A Departure,
when.*

And that it also maintain the Cause
of the Plaintiff's Action; for if it ap-
pear by the Plaintiff's Replication that
he hath no Cause of Action, there he
shall not have Judgment, although the
De-

Defendant's Plea or Bar be insufficient in matter. *Co. Rep.* 120.

And if it do differ, or vary from the Declaration, and not make good the same, it is called a Departure in Pleading, which is not sufferable. *Co. Lit.* 31. ^{A Departure, when.}

Also when the Replication doth neither confess and avoid, nor traverse the matter of the Bar, it is naught, and the Plaintiff may Demur to it, and shew this for Cause. *New Book of Entries*, fo. 14. ^{Demurred to.}

Where a Repleader may be, or not, and where it must begin. *See Mod. Ca.* fo. 2. 3. 102. ^{Repleader.}

To the Plaintiff's Replication follows the Defendant's Rejoinder, which is an Exception or Answer to the Replication, and must enforce the Defendant's Plea or Bar. ^{Rejoinder.}

After which in Degree is to follow the Plaintiff's Surrejoinder, or a second Defence of the Plaintiff's Action, opposite to the Defendant's Rejoinder. ^{Surrejoinder.}

And every one of these must be a sufficient Answer to the Matter objected by the adverse Party, and follow and enforce the Matter offered by him that Pleaded before ; and as the Replication must not differ from the (Count or) Declaration, so neither must the Rejoinder from the Bar. *Co. Lit.* 304.

Some-

*Rebutter.**Surrebutter.**Statute 4 and
5 Q. A.*

Sometimes (though very rarely) the Parties proceed so far in Pleading, that it comes to a Rebutter, and Surrebutter, before any Issue, or Demurrer; and therefore, a Demurrer, and joinder in Demurrer.

And by an Act of the 4 and 5 of Q. A. for the Amendment of the Law, 'tis Enacted, That after the first Day of *Trinity* Term, 1706. upon Demurrer joined in any Court of Record, the Judges shall give Judgment, as the right and matter in Law shall appear, without regarding any imperfection, or defect in any Writ, Return, Pleading, or Process, except those which the Party Demurring shall set down, as Causes of his Demurrer, notwithstanding such imperfection or defect have been taken to be matter of Substance, and not aided by 27 *Eliz. Ch. 5.* so as sufficient Matter may appear, upon which the Court may give Judgment, and no exception shall be taken for an immaterial Traverse, default of entering Pledges upon Bill or Declaration, or not alledging the bringing into Court any Deeds mentioned in the Pleading, Letters Testamentary, or of Administration, for omission of *vi et armis*, and *contra pacem*, or either of them, or *hoc paratus est verificare*, for *paratus est verificare per Recordum*, or *prout patet per Recordum*: But the Court shall give Judgment without

without regarding such Imperfections, or Defects, or other Matter of like nature, except shewed for Cause.

By this Act the Statutes of Jeofails, which only aided after a Verdict, are extended to Judgments without Trial; so as an original Writ or Bill, and Warrant of Attorney be filed; and hereby (with leave) the Defendant may plead as many several Matters as are necessary.

It is there also enacted, That no dilatory Plea shall be received in any Court of Record, unless the Truth thereof be proved by Affidavit, or some probable Matter shewn.

It is this Act that impowers the Sheriff to assign over the Bail Bond to the Plaintiff, and gives him the Plaintiff the Right of Action.

The Clause in this Act as to the dilatory Pleas seeming in some measure to be waved, you have inserted the following Precedents of Pleas, as well general as special: Most Pleas begin with a full Defence, *Venit & defendit* Full Defence. Co. Lit. 127. s. 195. *Vim & Injuriam, quando, &c.* That is, *Quando, ubi, & quomodo Curia videbitur*: Yet if you plead to the Jurisdiction of the Court, it must be without Imparance, and without making a full Defence; which is by leaving out the *Quando, &c.* and saying, That
the

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the Defendant came, and says that — and so on, as you will observe in the Precedents here printed, as they happened to be entered in my own Book, without Distinction as to Pleas in Bar or Abatement.

P L E A D I N G S.

*Non est Factum
Testatoris (it is
not the Deed of
the Testator) to
a Bond with an
Imparlance.*

AND now, at this Day, to wit, *Friday* next after the morrow of the *Holy Trinity*, until which Day the aforefaid *C. D.* had leave to imparle to the Bill aforefaid, and then to answer the same before our Lord the King at *Westminster*, came as well the aforefaid *A. B.* by his Attorney aforefaid, as the aforefaid *C.* by *J. E.* his Attorney; and the same *C.* defends himself against the Force and Injury laid by the aforefaid *A. B.* to his charge, when, where, and in such a manner as this Court shall award; and says, That he ought not to be charged with the aforefaid Debt, by virtue of the said Writing Obligatory; because he says, That the Writing Obligatory aforefaid is not the Deed of the aforefaid *R. E.* Baronet: And of this he puts himself upon the Country, and the aforefaid *A.* likewise. There-
fore

fore let a Jury come thereupon before ^{The joining of} our Lord the King at *Westminster*, on ^{Issue.} *Wednesday* next after three Weeks of the *Holy Trinity*, and who are neither of kin to the aforesaid *A.* nor to the aforesaid *C.* to recognize a Verdict between the Parties aforesaid; because as well the same *C.* as the same *A.* have put themselves upon the same Jury. The same Day is given to the Parties aforesaid at the same Place.

And the aforesaid *C. D.* by *J. E.* ^{Non assumpsit} his Attorney comes, and defends him- ^{infra sex annos,} self against the Force and Injury laid ^{(he made no} by the aforesaid *A. B.* to his charge, ^{such Promise} ^{within six} ^{Years.)} when, where, and in such a manner as this Court shall award; and says, That the aforesaid *A. B.* ought not to have or maintain his Action aforesaid thereupon against him; because he says, That he the same *C.* did not at any time, within six Years next before the Day of the exhibiting of the Bill aforesaid, make any such Promise, in Manner and Form as the aforesaid *A.* hath above thereupon declared against him: and this he is ready to aver; whereupon he prays Judgment, if the aforesaid *A.* ought to have or maintain his said Action thereof against him.

And the aforesaid *A.* says, That he, ^{The Replication.} for any thing by the aforesaid *C.* above
in

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in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against him, because he says, That the Bill of him the said *A.* aforesaid was exhibited here in Court, on *Monday* next after eight Days of Saint *Hillary*, being on the twenty third Day of *January*, in the fifth Year of the Reign of our said Sovereign Lord *George* the Second, now King of *Great Britain*: And that the aforesaid *C.* did within six Years next before the Day of the exhibiting of the said Bill, make such Promise, in Manner and Form as the aforesaid *A.* hath above declared against him the said *C.* And he prays that this may be enquired by the Country. And the aforesaid *C.* likewise——

*Nil debet per
Patriam. (He
owes nothing by
his Country),
as the Suit of
an Executor.*

— *As before* — And he says, That he did not owe to the aforesaid *T. B.* (the Testator) at the time of his Death, the aforesaid ten Pounds, nor any Sum of Money, in form wherein the same *A.* hath above declared against him; nor does he detain from the abovenamed *A.* as Executor of the last Will and Testament of the aforesaid *T. B.* the said ten Pounds, nor any Penny thereof, in Form wherein the same *A.* hath above declared against him: And of this he puts himself upon the Country.

And

And the aforefaid *C. D.* by *J. E.* He pleads another Cause depending in another Court. his Attorney — *as before* — And ſays, That he the ſaid *C.* ought not to be compelled to answer to the Bill of the aforefaid *A.* becauſe he ſays, That the ſaid *A.* heretofore, to wit, in the Term of Saint *Hillary* laſt paſt, in the Court of our Lord the King of the Bench, at *Westminster*, before the Juſtices of our ſaid Lord the King of the Bench there, had proſecuted him the ſaid *C.* for a certain Plea of Treſpaſs upon the Caſe, and for the ſame Cauſe in the Declaration aforeſaid abovementioned, as by the Record thereof in the ſame Court of the Bench remaining may appear; and that the ſaid Parties to and in the Plea aforeſaid, and the aforeſaid *A.* the now Plaintiff, and he the ſaid *C.* are the ſame Perſons, and no other, nor different; and that the Plea aforeſaid in the ſaid Court of the Bench aforeſaid yet remains undetermined: And this he is ready to aver; whereupon he prays Judgment, if he ought to be compelled to answer to the Bill aforeſaid.

And the aforeſaid *A.* ſays, that he, The Replianſion for any thing by the aforeſaid *C.* above in pleading alledged, ought not to be precluded or hindered from having an Answer to his Bill aforeſaid; becauſe he ſays, That there is no ſuch Record

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of the Plea aforesaid in the said Court of our said Lord the King of the Bench remaining, as he the same *C.* hath above in pleading alledged: And this he is ready to aver; whereupon he prays Judgment, and that the Bill aforesaid of him the said *A.* may be adjudged good; and the aforesaid *C.* may answer thereto, or in default thereof that his Damages may be adjudged to him by the occasion of the Premises.

The Rejoinder. And the aforesaid *C.* says, that there is such a Record of the Plea aforesaid, in the Court aforesaid of our said Lord the now King of the Bench aforesaid remaining, as he the same *C.* hath above in Pleading alledged; and this he is ready to aver by that Record: And it is appointed to the abovenamed *C.* by the Court of our said Lord the now King here, that he have that Record before our Lord the King at *Westminster*, on *Tuesday* next after fifteen Days of Saint *Martin* at his Peril: The same Day is given to the Parties aforesaid at the same Place.

Plea to an Action of Covenants upon a Lease for not repairing; That the Defendants had assigned over their Title.

— *As before* — And say, That the aforesaid *A.* and *J.* ought not to have and maintain their Action aforesaid thereupon against them; because they say, That after the Death of the aforesaid *S. L.* and after the Marriage celebrated

brated between the same *J.* and *M.* and before the aforesaid twenty five Pounds and ten Shillings in Arrearage for the said Rent, or any Part thereof, became due or payable, and also before the said demised Premises or any Part thereof became ruinous by Decay, destroyed, spoiled, or fallen down, for default of necessary Amendments and Reparations thereof, to wit, on the tenth Day of *July*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, at the Parish of Saint *John, Wapping*, in the said County; he the same *J.* had granted and did assign to one *J. M.* of *London*, Gentleman, the whole Estate, Title, Interest, and Term of Years, which they the same *J.* and *M.* then had to come of and in the Tenements aforesaid, with their Appurtenances: By virtue of which said Assignment the same *J. M.* afterwards, to wit, on the same Day and Year, entered into the Tenements aforesaid, with their Appurtenances, and was and yet is possessed thereof for the Remainder of the said Term in the Declaration aforesaid above specified: and this they are ready to aver; whereupon they pray Judgment, if the aforesaid *A.* and *J.* ought to have their Action aforesaid thereof against them.

M 2

And

The Replication

And the aforesaid *A.* and *J.* say, That they, for any thing by the aforesaid *J.* and *M.* his Wife above in pleading alledged, ought not to be precluded from having or maintaining their Action aforesaid thereupon against them; because they say, That the aforesaid *J.* hath not granted or assigned to the above-named *J. M.* the whole Estate, Title, Interest, and Term of Years, which they the same *J.* and *M.* had to come of and in the Tenements aforesaid, with their Appurtenances, in manner and Form as the aforesaid *J.* and *M.* have above thereof in pleading alledged: And this they pray may be inquired by the Country.

*A Demurrer
to the above
Replication.*

And the aforesaid *J. A.* and *M.* his Wife say, That the Plea aforesaid by the said *A.* and *J.* in Manner and Form aforesaid above in their Replication pleaded, and the Matter contained in the same, are no ways sufficient in Law for the said *A.* and *J.* to have, or maintain their Action aforesaid thereupon against them the said *J.* and *M.* To which said Plea they the same *J.* and *M.* have no necessity, nor are they bound by the Law of the Land in any manner to answer: And this they are ready to aver; whereupon for a Default of a sufficient Replication of them
the

the said *A.* and *J.* in this Particular, they the same *J.* and *M.* as before pray Judgment, and that the said *A.* and *J.* may be precluded from having their Action aforesaid thereupon against them the said *J.* and *M.*

And the aforesaid *A.* and *J.* say, *The Joining in Demurrer.*
That the Plea aforesaid, by the said *A.* and *J.* in Manner and Form aforesaid above in their Replication pleaded, and the Matter contained in the same, are good and sufficient in Law for the said *A.* and *J.* to have and maintain their Action aforesaid thereupon against them the said *J.* and *M.* which said Plea, and the Matter therein contained, they the same *A.* and *J.* are ready to aver and prove, as it shall seem meet to the Court: And because the aforesaid *J.* and *M.* have not answered to that Plea, nor that have hitherto in any manner denied, the same *A.* and *J.* as before pray Judgment, and their Damages by occasion of the Premises to be adjudged to them. But because the Court of our said Lord the King now here is not yet advised of giving their Judgment of and upon the Premises, a Day is given thereupon to the Parties aforesaid before our Lord the King at *Westminster*, until *Tuesday* next after fifteen Days of Saint *Martin*, for hearing

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of their Judgment of and upon those Premises : And because the Court of our said Lord the King here is not yet advised of giving Judgment thereupon, a further Day is given to the Parties aforesaid, before our said Lord the King at *Westminster*, until — (*such a Return, and so enter your Continuances 'till Judgment is given.*) —

*Judgment
pleaded in Bar.*

And the aforesaid *M. F.* by *J. E.* her Attorney comes and defends herself against the Force and Injury laid to her charge, when, where, and in such manner as this Court shall award ; and says, That the aforesaid *T. T.* ought not to have or maintain his Action aforesaid thereupon against her, because she says, That the aforesaid *H. F.* in his Life-time, to wit, on the seventh Day of *June*, in the Year of our Lord one thousand seven hundred and thirty, at *Lewes* in the County of *Sussex*, by his certain Writing Obligatory sealed with his Seal, bearing date on the same Day and Year, became held and bound to one *J. H.* in seven hundred Pounds of lawful Money of *Great Britain*, to be paid to the same *J.* when he should be thereunto required ; which said seven hundred Pounds was a true and just Debt from the aforesaid *H.* in his Life-time, and was due and unpaid to
the

the abovenamed *J.* at the Time of his Death; whereby the said *J.* for the Recovery of the aforesaid seven hundred Pounds after the Death of the aforesaid *H.* to wit, on *Wednesday* next after fifteen Days of *Easter*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, came into the Court of our said Lord the King, before the King himself, (the same Court then being at *Westminster* in the County of *Middlesex*) by *A. B.* his then Attorney, and brought into the same Court then there his certain Bill against her the said *M. F.* by the Name of *M. F.* Widow, Executrix of the last Will and Testament of *H. F.* her late Husband deceased, in the Custody of the Marshal of the *Marshalsey* of our Lord the King, before the King himself being, of a Plea of Debt of the said seven hundred Pounds, and then and there found Pledges of prosecuting his said Bill, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *Suffex* to wit, *J. H.* complains of *M. F.* Widow, Executrix of the last Will and Testament of *H. F.* her late Husband deceased, otherwise lately called *H. F.* of *Pemsey* in the County of *Suffex*, Merchant, in the

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Custody of the Marshal of the *Marshalsey* of our Lord the King, before the King himself being, of a Plea that she render to him seven hundred Pounds of lawful Money of *Great Britain*, which she unjustly detains from him; for that, to wit, that whereas the aforesaid *H.* in his Life-time, to wit, on the seventh Day of *June*, in the Year of our Lord one thousand seven hundred and thirty, at *Eastborn* in the County aforesaid, by his certain Writing Obligatory, sealed with the Seal of him the said *H.* and now shewn here to the Court of our said Lord the King, the Date whereof is the same Day and Year, acknowledged himself to be held and firmly bound to the abovenamed *J.* in the aforesaid seven hundred Pounds, to be paid to the same *J.* when he should be thereunto required: Yet the aforesaid *H.* in his Life-time, and the aforesaid *M.* after the Death of the abovenamed *H.* although oftentimes required, have not paid the said seven hundred Pounds to the same *J.* neither hath either of them paid the same; but the aforesaid *H.* in his Life-time, and the aforesaid *M.* after the Death of him the said *H.* have hitherto entirely denied to pay that to him; and the aforesaid *M.* yet denies to pay that to him,

him, and unjustly detains the same from him, to the Damage of him the said *J.* of ten Pounds: and thereupon he brings his Suit. And the aforesaid *M.* by *T. N.* her then Attorney in the same Court then came, and defended the Force and Injury, when, where, and in such a manner as the said Court should award: And the aforesaid *J.* then prayed that the said *M.* should answer to his Bill aforesaid; whereupon the same Attorney of the said *M.* then said, That he was not informed by the said *M.* then his Mistress of any Answer to be given to the same *J.* for the abovenamed *M.* in the Complaint aforesaid; nor did he say any other Thing in bar or preclusion of the aforesaid Action of him the said *J.* whereby the same *J.* remained thereof undefended: Therefore then it was considered by the same Court, that the aforesaid *J.* should recover against the abovenamed *M.* his Debt aforesaid, and also forty three Shillings for his Damages which he hath sustained, as well by occasion of detaining of that Debt, as for his Costs and Charges by him expended about his Suit in that particular, to the same *J.* by the Court of our said Lord the King, before the King himself, then there, with her
Assent

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Assent adjudged of the Goods which were of the aforesaid *H.* at the Time of his Death, in the Hands of her the said *M.* to be administered, if she should have so much in her Hands; and if she should not have so much in her Hands, then the Damages aforesaid to be levied on the proper Goods and Chattels of her the said *M.* and that the aforesaid *M.* should then be in Mercy; as by the Record and Process thereof in the said Court of our said Lord the King, before the King himself, at *Westminster* aforesaid, of Record aforesaid being, may more fully appear: Which said Judgment yet remains in full Force and Effect not reversed, annulled, or satisfied. And the aforesaid *M.* further says, That she hath fully administered all the Goods and Chattels, which were of the aforesaid *H. F.* at the Time of his Death in her Hands to be administered, and that she has no Goods or Chattels, which were of the said *H. F.* at the Time of his Death in her Hands to be administered; nor had on the Day of the exhibiting of the Bill of him the said *T. T.* aforesaid, or ever afterwards, except Goods and Chattels to the Value of ten Shillings, which are charged and bound by the Execution of the said Judgment: And this she

she is ready to aver; whereupon she prays Judgment, if the aforesaid *T. T.* ought to have or maintain his Action aforesaid thereupon against her, with this, that the same *M.* is willing to aver, that the aforesaid *H. F.* in the Declaration of him the said *T. T.* above-named, and the aforesaid *H. F.* in the Record of the Judgment aforesaid above-named, was one and the same Person, and no other nor different.

And the aforesaid *J.* says, That he, *A Replication to a Judgment pleaded in Bar.* for any thing by the aforesaid *W. D.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against the aforesaid *W. B.* because he says, that the Bill of him the said *J.* aforesaid, was exhibited in Court here on *Wednesday* next after fifteen Days of *Easter*, being on the twenty sixth Day of *April*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*; and that the said *W. D.* on the aforesaid Day of the exhibiting of the Bill of him the said *J.* aforesaid, had sufficient Goods and Chattels, which were of the aforesaid *W. B.* at the Time of his Death, in the Hands of him the said *W. D.* to be administered, whereof he could have satisfied the same *J.* for the said several Sums of

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of Money in his Bill aforesaid above-mentioned, over and above what is sufficient to satisfy the said Damages of one hundred and twelve Pounds in the Record and Judgment aforesaid above-mentioned, to wit, at the said Parish of *Saint Martin in the Fields*, in the County of *Middlesex* aforesaid; and this he prays may be inquired by the Country, and the aforesaid *W. D.* likewise.

*That an Action
is depending in
the Court of
Common
Pleas for the
same Cause.*

— *As before* — And says, That he ought not to answer to the Declaration of the aforesaid *A.* because he says, that the said *A.* had prosecuted out of the Court of our said Lord the King of *Chancery* at *Westminster*, in the County of *Middlesex*, a certain Original Writ of our said Lord the King, against him the said *C.* returnable before the Justices of our said Lord the King, from the Day of *Easter*, in fifteen Days last past, to the then Sheriffs of *London* directed for two thousand Pounds upon an Assumption. And the aforesaid *C.* by *M. H.* his Attorney, appeared in the same Court of our said Lord the King of the Bench aforesaid, and found sufficient Bail to answer to the aforesaid *A.* of the Plea aforesaid, as by the Record thereof in the same Court of our said Lord the King of the Bench aforesaid
may

may more fully appear : Which Plea is yet depending undetermined, and not discontinued in the same Court of our said Lord the King of the Bench aforesaid, and which said Plea against him the said C. in the same Court of the Bench aforesaid, so as is before related to be depending, and the Plea aforesaid against him the said C. now in the Court of our said Lord the King, before the King himself, at *Westminster*, of the Term of Saint *Hillary*, in like manner depending, are for one and the same Cause, and no other, nor different. And the same C. further in Fact says, that the said A. in the aforesaid Original Writ, and the said A. in the Declaration aforesaid above mentioned, is one and the same Person, and no other, nor different ; and that he the same C. in the same Original Writ, and the said C. in the Declaration aforesaid above-mentioned, is one and the same Person, and no other, nor different ; and this he is ready to aver : Whereupon he prays Judgment, if the aforesaid C. ought to answer to the Declaration aforesaid of the said A. in the Court of our said Lord the King, before the King himself now here depending.

The

The Clerk's

The Replication, — That there is no such Record. And the Rejoinder exact as before.

*Mistomer
pleaded.*

And *E. B.* who is now impleaded by the Name of *M. B.* at the Suit of the said *J. G.* in her own proper Person comes and defends herself against the Force and Injury laid to her Charge, and prays Judgment of the Bill aforesaid, because she says, that she is named and called *E.* and by the same Name was always hitherto from her Nativity named and called, without that, that she is named and called *M. B.* or by the same Name was known and called, as by the Bill of him the said *J. G.* it is above supposed, and this she is ready to aver; whereupon she prays Judgment of the Bill aforesaid, and that, that Bill, may be quash'd.

*The Replication
with an Im-
parlance.*

And the aforesaid *J.* prays a Day to imparle to the Plea aforesaid, and it is granted to him; and thereupon a Day thereof is given to the Parties aforesaid, before our Lord the King, at *Westminster*, until *Wednesday* next after eight Days of Saint *Hillary*, to imparle to the Plea aforesaid, and then to reply; at which Day, before our Lord the King, at *Westminster*, came as well the aforesaid *J.* by his Attorney aforesaid,

as the aforefaid Defendant in her own proper Person. And the fame *J.* fays, that his Bill aforefaid, for any thing before alledged, ought not to be quafhed, becaufe he fays, that the aforefaid *M.* the Person againft whom the faid *J.* did exhibit his Bill, by the Name of *M. B.* and who, in Abatement thereof did plead, that ſhe, from the Time of her Nativity, was hitherto named and called by the Name of *E. B.* is both named, and was called by the Name of *M. B.* as by the Bill aforefaid is above fupposed, to wit, at the Parifh aforefaid, in the County aforefaid; and this he prays may be enquired by the Country, and the aforefaid *E.* who is impleaded by the Name of *M.* likewise.

And the aforefaid *L. S.* and *M.* his ^{Not Guilty} Wife, by *F. N.* their Attorney, come ^{within fix} and defend themſelves againft the Force ^{Years.} and Injury laid to their Charge, when, where, and in ſuch a Manner as this Court ſhall award, and ſay, that the faid *J.* ought not to have or maintain his Action againft them, becaufe they ſay, that the aforefaid *M.* is not at any Time within ſix Years before the exhibiting the Bill of him the faid *J.* guilty of the Trefpafs aforefaid, in Manner and Form as the aforefaid *J.* above thereupon complains againft them, and
this

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this they are ready to aver; whereupon they pray Judgment, if the aforesaid *J.* ought to have or maintain his Action aforesaid thereupon against them the said *L.* and *M.*

*Plea to a Scire
Facias, that
the Defendant
died before the
Return of the
Ca. Sa.*

And the said *T. R.* and *T. P.* by *J. E.* their Attorney, come, and say, that the said *P.* ought not to have his Execution against them for the Damages aforesaid, by Vertue of the Recognizance aforesaid, because they say, that the aforesaid *R. L.* after the Day of the rendering of the Judgment aforesaid against him the said *R.* at the Suit of the aforesaid *P.* and before the Day of the Return of the Writ of *Capias ad Satisfaciendum* prosecuted by the aforesaid *P.* against the same *R.* of and upon that Judgment, to wit, on the twenty-third Day of *October*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, died, to wit, at *Westminster* aforesaid, in the said County of *Middlesex*, and this they are ready to aver; whereupon they pray Judgment, if the aforesaid *P.* ought to have his Execution against them for his Damages aforesaid, by Vertue of the Recognizance aforesaid.

And

And the aforesaid *P.* says, That he, <sup>The Replica-
tion.</sup> for any thing by the aforesaid *T. R.* and *T. P.* above in pleading alledged, ought not to be precluded from having his Execution aforesaid against them, for his Damages aforesaid, by Virtue of the Recognizance aforesaid, because he says, That the aforesaid *R. L.* upon the Day of the Return of the said Writ of *Capias ad Satisfaciendum*, prosecuted by him the said *P.* against the same *R.* of and upon the Judgment aforesaid, and a long Time afterwards was alive, and in full Life, to wit, at *Westminster* aforesaid, in the said County of *Middlesex*; and this the same *P.* prays may be enquired by the Country, and the aforesaid *T. R.* and *T. P.* likewise.

And the aforesaid *H.* by *J. L.* his <sup>A Demurrer
to a Declara-
tion since the
late Act.</sup> Attorney, comes and defends himself against the Force and Injury, — (*as before*) — and prays Judgment of the Declaration aforesaid, because he says, That that Declaration, and the Matter contained in the same are no ways sufficient in Law for the said *J.* to have or maintain his Action aforesaid against him the said *H.* to which said Declaration the same *H.* hath no Necessity, nor is he bound by the Law of the Land in any manner to answer, and this he is ready to aver; whereupon, for Default

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of a sufficient Declaration in this Particular, the same *H.* prays Judgment of the Declaration aforesaid, and that that Declaration may be quashed. And for the Cause of Demur in Law upon that Declaration, the same *H.* according to the Form of the Statute in such Case lately made and provided, shews, and to the Court here demonstrates these Causes following, to wit, — Because it does not appear by that Declaration from whence or to what Place or Village that Way led, — nor of what Nature or Sort that Way was, — nor by what Right the same *H.* ought to repair that Way.

*Infra Etatem,
Within Age.*

— *As before,* — And says, That the said *A.* ought not to have or maintain his Action aforesaid thereupon against him; because he says, that he the said *C.* at the said several Times of the making of those several Promises and Assumptions, was within the Age of One and Twenty Years, to wit, at *London* aforesaid, in the Parish and Ward aforesaid, and this he is ready to aver; whereupon he prays Judgment if the said *A.* ought to have or maintain his Action aforesaid thereupon against him.

The Replication.

And the said *A.* says, That he, for any thing by the aforesaid *C.* above in pleading alledged, ought not to be precluded from

from having his Action aforesaid there-
upon against him, because he says, that
the aforesaid C. at the aforesaid several
Times of the making of the several
Promises and Assumptions aforesaid,
was of the full Age of One and Twenty
Years, to wit, at *London* aforesaid, in
the Parish and Ward aforesaid. With-
out that, that the said C. at the said se-
veral Times of the making those several
Promises and Assumptions was within
the Age of One and Twenty Years, as
the aforesaid C. hath above in pleading
alleged: and this he is ready to aver;
whereupon he prays Judgment, and his
Damages by the Occasion of the not
performing of the several Promises and
Assumptions aforesaid, to be adjudged
to him.

And the aforesaid C. as before, says, *The Rejoinder*
That he the said C. at the aforesaid se-
veral Times of the making of those se-
veral Promises and Assumptions, was
within the Age of One and Twenty
Years, to wit, at *London* aforesaid, in
the Parish and Ward aforesaid, as the
aforesaid C. hath above in pleading al-
leged; and of this he puts himself up-
on the Country, and the aforesaid A.
likewise.

And the aforesaid C. in his own pro- *Plea to the Ju-*
per Person comes and defends himself *isdiction of the*
Court.

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against the Force and Injury laid to his Charge, and says, That the Cause of Action of him the said *A.* aforesaid, hath accrued to the same *A.* upon the high Sea near *Gravesend*, in the County of *Kent*, out of the Jurisdiction of this Court, and not at *London* aforesaid, or in any other Place within the Jurisdiction of this Court, and this he is ready to aver, as shall seem meet to the Court; whereof he says, that the Court of our Lord the King here ought not, nor cannot have, or hold Cognizance of the Plea aforesaid.

*That he paid
40 l. in full of
all Demands.*

And the aforesaid *C. D.* by *J. E.* his Attorney, comes and defends himself against the Force and Injury laid by the aforesaid *A. B.* to his Charge, when, where, and in such Manner as this Court shall award, and says, That the aforesaid *A. B.* ought not to have or maintain his Action aforesaid thereupon against him, because he says, That he the said *C.* upon the second Day of *October*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, at *London* aforesaid, in the Parish and Ward aforesaid, did pay to the above-named *A.* forty Pounds of lawful Money of *Great Britain*, in full Satisfaction and Discharge of all Debts and Demands

mands whatsoever, before that Time due to the same *A.* by the above-named *C.* which said forty Pounds the aforesaid *A.* then and there had and received from the same *C.* and this he is ready to aver; whereupon he prays Judgment if the aforesaid *A.* ought to have or maintain his Action aforesaid thereupon against him.

And the aforesaid *A. B.* says, That ^{*The Replication.*} he, for any thing by the aforesaid *C.* above pleaded in Bar, ought not to be precluded from having his Action aforesaid thereupon against him the said *C.* because he says, That he the said *C.* did not pay to the same *A.* forty Pounds in the Plea aforesaid mentioned, in full Satisfaction or Discharge of all Debts and Demands whatsoever, in Manner and Form as the same *C.* hath above in pleading alledged; and this he prays may be enquired by the Country, and the said *C.* likewise.

And the aforesaid *C.* by *W. D.* his ^{*That he paid five Guineas in full of all Things whatsoever.*} Attorney, comes and defends — (*as before*) — And says, That the aforesaid *J.* ought not to have or maintain his Action aforesaid thereupon against him, because he says, that he the same *C.* did, on the ninth Day of *May*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now

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King of *Great Britain*, pay to the same *J.* five pieces of Gold called Guineas, to the Value of five Pounds and five Shillings of lawful Money of *Great Britain*, in full Satisfaction of all Things whatsoever then due from the same *C.* to the same *J.* from the beginning of the World until the said Ninth Day of *May*; which said five Pieces of Gold, called Guineas, the same *J.* as is before related, received and accepted from the same *C.* at *London* aforesaid, in the Parish and Ward aforesaid; without that, that the same *C.* after the said ninth Day of *May*, in the fifth Year aforesaid, assumed upon himself in Manner and Form as the aforesaid *J.* above complains against him: and this he is ready to aver; whereupon he prays Judgment, if the said *J.* ought to have or maintain his Action aforesaid thereupon against him.

*The Replica-
tion.*

And the aforesaid *J.* says, That he, for any thing by the said *C.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against him, because by protesting that the said *C.* hath not paid to the same *J.* the aforesaid five Pieces of Gold, in full Satisfaction of all things whatsoever then due from the same *C.* to the same *J.* from the beginning of
the

the World until the said ninth Day of *May*, in Manner and Form as he the same *C.* hath above in pleading alledged; for a Plea the same *J.* says, that he had not, or did not accept the said Five Pieces of Gold in Manner and Form as the said *C.* hath above in pleading alledged; and this he prays may be enquired by the Country, and the afore-said *C.* likewise.

And the afore-said *M.* by *J. E.* her Attorney comes — *as before* — and says, That the said *J.* ought not to have or maintain her Action afore-said there-upon against her, because she says, that the said *P.* in the said Bill abovementioned, being ill, but of sound Mind after the making of the several Promises and Assumptions afore-said, to wit, on the eleventh Day of *July*, in the Year of our Lord one thousand seven hundred and thirty one, at *London* afore-said, to wit, in the Parish and Ward afore-said, made his last Will and Testament in Writing, and thereby constituted and appointed her the said *M.* Executrix of his last Will afore-said; and thereupon the same *M.* administered divers Goods and Chattels which were of the abovenamed *P.* at the Time of his Death, to wit, at *London* afore-said, in the Parish and Ward afore-said:

*That she is
Executrix,
and not Ad-
ministratrix.*

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Without that, That he the said *P.* dyed intestate as the said *J.* by her Bill aforesaid above supposes, and this she is ready to aver; whereupon she prays Judgment, if the said *J.* ought to have or maintain her Action aforesaid thereupon against her.

The Replication And the aforesaid *J.* says, That she, for any thing by the aforesaid *M.* above in pleading alledged, ought not to be precluded from having her Action aforesaid thereupon against her; because she says, That the aforesaid *P.* died intestate, as by the Bill of her the said *J.* it is above alledged: and this she prays may be enquired by the Country, and the aforesaid *M.* likewise.

Plea to a Scire Facias, that there was no Capias ad Satisfaciendum sued out against the Defendant. And the aforesaid *W. C.* and *W. H.* by *J. E.* their Attorney come, and say, That the aforesaid *R. C.* ought not to have his Execution for the Damages aforesaid by virtue of the Recognizance aforesaid; because they say, That after the Day of the rendering of the Judgment aforesaid against the said *T. H.* at the Suit of the said *R. C.* and before the issuing of the said Writ of our Lord the King of *Scire Facias*, against them the said *W. C.* and *W. H.* as being the Bail of the said *T. H.* at the Suit of the said *R. C.* no Writ of *Capias ad Satisfaciendum* had been duly prosecuted, returned,

returned, and affiled of Record at the Suit of the said *R. C.* against the above-named *T. H.* for the Damages aforesaid, according to due Process of Law and the Custom of this Court: And this the same *W. C.* and *W. H.* are ready to aver; whereupon they pray Judgment, if the said *R. C.* ought to have Execution against them for the Damages aforesaid, by virtue of the Recognizance aforesaid.

And the aforesaid *R. C.* says, That The Repl-
cation. he, for any thing by the said *W. C.* and *W. H.* above in pleading alledged, ought not to be precluded from having his Execution against them for the Damages aforesaid; because he says, That after the rendering of the Judgment aforesaid against the said *T. H.* and before the obtaining of the said first Writ of *Scire Facias*, to wit, on the twenty eighth Day of *November*, in the fifth Year of the Reign of our said Lord the now King, he the said *R.* did prosecute out of the Court of our said Lord the King, before the King himself, (the same Court then being at *Westminster* aforesaid in the County of *Middlesex* aforesaid,) a certain Writ of our said Lord the King of *Capias ad Satisfaciendum* against the same *T.* for his Damages aforesaid, upon the Judgment
afore-

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aforesaid, directed to the then Sheriffs of *London*; by which said Writ our said Lord the King commanded the said Sheriffs of *London*, that they should take the aforesaid *T.* if he might be found in their Bâiliwick, and keep him safely, so that the same Sheriffs should have his Body before our said Lord the King at *Westminster*, on *Monday* next after eight Days of Saint *Hillary*, to satisfy the abovenamed *R. C.* for the aforesaid eighteen Pounds and eight Shillings for the Damages aforesaid; and that the same Sheriffs should then have there that Writ; which said Writ of our said Lord the King of *Capias ad Satisfaciendum* afterwards, and before the Return of the same Writ, to wit, on the said twenty eighth Day of *November*, in the above-said fifth Year of the Reign of our said Lord the now King, at *London* aforesaid, to wit, in the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*, was delivered in due Form of Right to be executed to *S. F.* Esquire, and Sir *J. S.* Knight, then being Sheriffs of the City of *London* aforesaid: On which *Monday* next after eight Days of Saint *Hillary*, before our Lord the King at *Westminster*, the aforesaid *R.* came in his own proper Person, and the

the said then Sheriffs of *London* afore-
said, to wit, the said *S. F.* Esquire,
and Sir *J. S.* Knight, on that Day re-
turned, That the said *T. H.* was not
found in their Bailiwick, as by the said
Writ of *Capias ad Satisfaciendum*,
and the Return thereof in the said Court
of our said Lord the now King, before
the King himself here, to wit, at *West-*
minster afore said, of Record remaining,
being affiled, may more fully appear.
And this he is ready to aver by that
Record; whereupon he prays Judg-
ment, and that his Execution for the
Damages afore said against the afore said
W. C. and *W. H.* may be adjudged to
him.

Upon this the Master gives a Rule
to rejoin, which usually is, —
That there is no such Record
as in the Replication; Surrejoinder,
— That there is such a Re-
cord, which see before.

And the afore said *R.* by *J. M.* her *A Bond pleaded*
Attorney, comes, — (*as before*) — and *in Bar by an Ad-*
says, That the said *J.* ought not to *ministratrix.*
have or maintain his Action afore said
thereupon against her; because she says,
That the afore said *T. K.* in his Life-
time, to wit, on the twentieth Day of
November, in the Year of our Lord
one

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one thousand seven hundred and thirty one, at *London* aforesaid, in the Parish and Ward aforesaid, by his certain Writing Obligatory, sealed with the Seal of him the said *T.* in his Life-time, the Date whereof is the same Day and Year, for a true and just Debt acknowledged himself to be held and firmly bound to one *E. B. Widow*, in two hundred Pounds of good and lawful Money of *Great Britain*, to be paid to the same *E.* when he should be thereunto required; which said two hundred Pounds at the Time of the Death of the aforesaid *T.* was truly and justly due, and the said *E.* was not paid or satisfied in the Life-time of him the said *T.* or by her the said *R.* after the Death of him the said *T.* and that Writing Obligatory yet remains in full Force, Power, and Vertue, and is not paid, satisfied, or cancelled. And the same *R.* farther says, That she the same *R.* hath fully administered all the Goods and Chattels which were of the aforesaid *T.* at the Time of his Death, except Goods and Chattels to the Value of forty Shillings; and that she has no other Goods and Chattels which were of the aforesaid *T.* at the Time of his Death in her Hands to be administered, nor had she on the Day of the exhibiting

biting of the Bill of the aforesaid J. nor ever afterwards, except the Goods and Chattels to the Value of the said forty Shillings, which are charged and bound with the Payment of the Debt upon the aforesaid Writing Obligatory, as is before related to be due and unpaid: And this she is ready to aver; whereupon she prays Judgment, if the aforesaid J. ought to have or maintain his Action aforesaid thereupon against her.

And the aforesaid J. by T. M. his Attorney comes and defends himself against the Force and Injury laid to his Charge, when, where, and in such a manner as this Court shall award; and says, That the said A. ought not to have or maintain his Action aforesaid thereupon against him; because he the same J. by Force, and according to the Form of a certain Act of Parliament in the Parliament of our Lady the now Queen, held by Prorogation at *Westminster*, in the County of *Middlesex*, on the twenty fifth Day of *October*, in the fourth Year of her Reign, entitled, An Act to prevent Frauds frequently committed by Bankrupts, lately made and provided, says, That he the same J. after the twenty fourth Day of *June*, which was in the Year of our Lord

Double Plea by an Order of Court, to wit, A Bankrupt, and discharged by the Insolvent Debtors Act.

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Lord one thousand seven hundred and six, to wit, on the thirteenth Day of *June*, in the Year of our Lord one thousand seven hundred and eleven, at *London* aforesaid, in the Parish and Ward aforesaid, became a Bankrupt within the meaning of divers Statutes of this Kingdom concerning Bankrupts thereof lately made and provided, and that the same *J.* did not become a Bankrupt before that Day last mentioned, and that the said several Causes of Action aforesaid in the Declaration aforesaid abovementioned, did accrue and every of them did acerue to the said *A.* before the said Time, that the said *J.* as is before related, became a Bankrupt, to wit, at *London* aforesaid, in the Parish and Ward aforesaid: And this he is ready to aver; and the same *J.* according to the Form of the Statute in such Case lately made and provided, by Vertue of Licence to him thereupon given, further says, That the several Causes of Action aforesaid in the Declaration aforesaid abovementioned accrued, and each of them did accrue to the aforesaid *A.* before the seventh Day of *December*, in the Year of our Lord one thousand seven hundred and eleven; without that, That he the same *J.* upon that Day or ever after-

afterwards assumed upon himself in Manner and Form aforesaid: and this he is ready to aver. And the same *J.* further says, That he cannot deny the said Action of him the said *A.* But the same *J.* further says, That the aforesaid *A.* ought not to have Execution for the Damages recovered in this particular against the same *J.* against the Person of him the said *J.* or of his wearing Apparel, Bedding for his Family, and necessary Tools for his Trade or Business; because he says, That he the same *J.* on the said seventh Day of *December*, in the abovesaid Year of our Lord one thousand seven hundred and eleven, and before, and always from that Time continually afterwards, until his Discharge from his Imprisonment here afterwards mentioned, was actually a Prisoner in the Prison of our Lady the now Queen, called the Prison of Saint *Katherine* near the Tower of *London*, situate, lying and being in the Parish of Saint *Katherine* near the Tower, in the County of *Middlesex* aforesaid, at the Suit of one *E. J.* a Creditor of him the said *J.* of a Plea of Trespass upon the Case for a true and just Debt of thirty Pounds then due from him the said *J.* to the aforesaid *E.* and before that Time contracted

to

The Clerk's

to wit, at *London* aforesaid, in the Parish and Ward aforesaid; and that he the same *J.* according to the Form of a certain Act of Parliament made in the Parliament of our said Lady the now Queen, by several Prorogations and Adjournments held at *Westminster* in the County of *Middlesex*, on the said seventh Day of *December*, in the tenth Year of the Reign of our said Lady the now Queen, entitled, An Act for the Relief of Insolvent Debtors, by obliging their Creditors to accept the utmost Satisfaction they are capable to make, and restoring them to their Liberty at the general Sessions of the Peace of our said Lady the now Queen, held by Adjournment at *Hicks's Hall* in Saint *John* Street, in the Parish of Saint *James Clerkenwell*, in and for the said County before *J. M. J. R.* and *T. R.* Esquires, and others their Companions Justices of our said Lady the now Queen, assigned to preserve the Peace in and for the County of *Middlesex* aforesaid, on the seventeenth Day of *September*, in the Year of our Lord one thousand seven hundred and twelve, in due manner was discharged, and released from his Imprisonment aforesaid, and this he is ready to aver, if the aforesaid *A.* ought to have any Execution in this Par-

Particular against the Person of him the said *J.* or of his wearing Apparel, Bedding for his Family, and necessary Tools for his Trade or Business.

And the said *C.* by *T. M.* his Attorney comes and defends — (*as before*) — Pleads that the Plaintiff is outlawed.

And says, That the said *A.* ought not to have or maintain his Action aforesaid thereupon against him ; because he says, That one *J. P.* Gentleman, heretofore, to wit, in the Term of *Easter* last past, impleaded him the said *A.* in the Court of our Lord the now King of the Bench at *Westminster*, of a Plea of Trespass and Assault. And the said *A.* for that because he did not come into the Court of our said Lord the now King of the Bench aforesaid, to answer thereupon to the abovenamed *J. P.* according to the Law and Custom of this Kingdom of *Great Britain*, was put in a Writ of *Exigent* to be Outlawed in *London* : And upon that occasion afterwards, to wit, on *Monday* next before the Feast of Saint *Cecilia* last past, in *London* aforesaid, was outlawed, as by the Record and Process thereof in the Court of our said Lord the now King of the Bench aforesaid remaining may more plainly appear ; which said Outlawry against the abovenamed *A.* in Form aforesaid had and

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proclaimed, is not annihilated : And this he is ready to aver ; whereupon he prays Judgment, if the said *A.* ought to have or maintain his Action aforesaid thereupon against him ; with this, That the same *C.* is willing to aver, that the aforesaid *A.* in the said Writ of *Exigent* abovenamed, and the aforesaid *A.* the now Plaintiff, are one and the same Person, and no other, nor different.

*The Replie-
cation.*

And the aforesaid *A.* says, That he, for any thing by the aforesaid *C.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against him ; because he says, That there is no such Record of Outlawry aforesaid, in the said Court of our said Lord the King of the Bench aforesaid remaining, as the same *C.* hath above in pleading alledged : And this he is ready to aver ; whereupon he prays Judgment, and his Debt aforesaid, together with his Damages by the occasion of detaining of that Debt to be adjudged to him.

The Rejoinder.

And the aforesaid *C.* says, That there is such a Record of Outlawry aforesaid in the said Court of our said Lord the now King of the Bench aforesaid remaining, as the same *C.* hath above in pleading alledged ; and this he is ready to aver by that Record :
And

And the abovenamed C. is ordered by the Court of our said Lord the now King here, to have that Record before our Lord the King at *Westminster*, on *Monday* next after fifteen Days of Saint *Martin* at his Peril. The same Day is given to the Parties aforesaid at the same Place.

And now at this Day, to wit, *Monday* next after three Weeks of Saint *Michael*, in that same Term, until which Day the aforesaid *M. W.* had leave to imparle to the Bill aforesaid, and then to answer the same before our Lord the King at *Westminster*, came as well the aforesaid *W. S.* by his Attorney aforesaid, as the aforesaid *M. W.* who is within the Age of one and twenty Years, by *F. W.* her Guardian, by the Court here specially admitted: And the same *M.* defends herself against the Force and Injury laid to her his Charge, when, where, and in such a manner as this Court shall award; and says, That the aforesaid *W.* ought not to have or maintain his Action aforesaid thereupon against her; because she says, that she the said *M.* at the Time of making of the several Promises and Assumptions in the Declaration aforesaid mentioned, was within the Age of one and twenty Years: And this she

A Plea by an Infant by her Guardian— That she is within Age— with an Im- parlance.

The Clerk's

is ready to aver ; whereupon she prays Judgment, if the aforesaid *W.* ought to have or maintain his Action aforesaid thereupon against her.

Replication to the first and second Promises in the Declaration that the Goods were for Necessaries, to the third (Nolle Prosequi) The Plaintiff will not prosecute.

And the aforesaid *W.* says, That he for any thing by the said *M.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against her ; because, as to the first and second Promise and Assumption of her the said *M.* in the Declaration aforesaid mentioned, the same *W.* says, That the said Goods, Wares, and Merchandizes of him the said *W.* by the aforesaid *W.* to the same *M.* in Form aforesaid sold and delivered, were sold and delivered to and for the necessary and convenient Apparel and Covering of the Body of the said *M.* And this he is ready to aver ; whereupon he prays Judgment, and his Damages by the occasion of the Non-performance of the aforesaid first and second Promises, to be adjudged to him. And as to the third Promise and Assumption of her the said *M.* in the Declaration aforesaid mentioned, the aforesaid *W.* confesses here in the Court of our said Lord the now King, that he will no further proceed against the same *M.* as to that Promise and Assumption, but entirely refuses any further to prosecute there-

upon; therefore let no other or any further Process be made thereupon against the above-named *M.* and let the same *M.* go thereon without Day.

And the aforesaid *M.* as to the Plea aforesaid, as to the first and second Promise and Assumption aforesaid in the Declaration aforesaid mentioned says, That the aforesaid Goods, Wares, and Merchandizes of him the said *W.* by the aforesaid *W.* to the same *M.* in Form aforesaid sold and delivered, were not sold and delivered to and for the necessary and convenient Apparel or Covering for the Body of the aforesaid *M.* And of this she puts herself upon the Country; and the aforesaid *W.* thereupon likewise.

The Rejoinder.

And the aforesaid *J.* by *G. N.* his Attorney, comes and defends himself against the Force and Injury — *as before*

Plea to a Judgment that there is no such Record.

— And says, That the said *W.* ought not to have his Action aforesaid thereupon against him; because he says, That there is no such Record of the Recovery of the Damages aforesaid between the said *W.* and the abovenamed *J.* in the said Court of our said Lord the King of the aforesaid Term of Saint Michael, in the third Year of

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the Reign of our said Sovereign Lord *George* the Second, now King of *Great Britain*, before the King himself, at *Westminster* in the County of *Middlesex* then being, remaining, as the aforesaid *W.* hath in his Declaration above alledged: And this he is ready to aver; whereupon he prays Judgment, if the aforesaid *W.* ought to have his Action aforesaid thereupon against him.

The Replication

And the aforesaid *W.* says, That he, for any thing by the aforesaid *J.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against him; because he says, That there is such a Record of the Recovery of the Damages, Costs and Charges aforesaid, between the aforesaid *W.* and the abovenamed *J.* in the said Court of our said Lord the King before the King himself here, to wit, at *Westminster*, of the aforesaid Term of Saint *Michael*, in the aforesaid third Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain* remaining, as the aforesaid *W.* by his Declaration aforesaid hath above alledged: And this he is ready to aver by that Record, as the Court here shall think fit; whereupon he prays Judgment, and his Debt aforesaid.

aforesaid, together with his Damages by the occasion of detaining of that Debt to be adjudged to him.

— And says, That the aforesaid *W.* ^{Plene computavit, He hath fully accounted.} ought not to have or maintain his Action aforesaid thereupon against him; because he says, That he the same *J.* after the aforesaid Time, wherein it is supposed, that he was Bailiff of the said *W.* of his Goods and Merchandizes aforesaid, to wit, on the tenth Day of *May*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, at *London* aforesaid, in the Parish and Ward aforesaid, did fully account with the abovenamed *W. M.* concerning the Time for the Goods and Merchandizes aforesaid: And this he is ready to aver: whereupon he prays Judgment, if the aforesaid *W.* ought to have or maintain his Action aforesaid thereupon against him.

And the aforesaid *W. M.* says, That ^{The Replication} he, for any thing by the said *J.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against him the said *J.* because he says, That the aforesaid *J.* hath not accounted with him the abovenamed *W.* for the Goods and Merchandizes aforesaid, as the same *J.* hath

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above in pleading alledged: And this he prays may be enquired by the Country; and the aforesaid *J.* likewise.

*A Bond to the
King pleaded in
Bar to a Scire
Facias by an
Administratrix*

And the aforesaid *J. H.* by *J. G.* her Attorney comes, and says, That the aforesaid *D.* ought not to have Execution aforesaid for the said several Damages, Cofts and Charges; because she says, That the aforesaid *W. H.* in his Life-time, on the twenty fourth Day of *December*, in the Year of our Lord one thousand seven hundred and twenty five, at *London* aforesaid, in the Parish and Ward aforesaid, by his certain Writing Obligatory, sealed with his Seal, bearing Date on the same Day and Year, for a true and just Debt, acknowledged himself to be held and firmly bound to our most Serene Sovereign Lord *George* the First, late King of *Great Britain*, in two thousand four hundred seventy and five Pounds of good and lawful Money, to be paid to our said Lord the late King, when afterwards he should be thereunto required; which said Writing was under a Condition thereto subscribed for the Payment, or the causing to be paid by him the said *W. H.* to one *J. S.* Esquire, the then Receiver-General and Cashier of the Customs of our said late King,

or

or the Receiver-General of the same for the time being, for the Use of our said late King, the Sum of one thousand two hundred thirty seven Pounds ten Shillings and six Pence of lawful Money, upon or before the ninth Day of *June*, which then should be in the Year of our Lord one thousand seven hundred and twenty seven; which said Writing Obligatory yet remains in its full Force and Effect, not cancelled, annulled, or satisfied; and that the aforesaid whole Sum of Money mentioned in the Condition to that Writing Obligatory was due and unpaid at the Time of the Death of the said *W. H.* and yet is due and unpaid. And the aforesaid *J.* further says, That she hath fully administered all the Goods and Chattels which were of the aforesaid *W. H.* at the Time of his Death in the Hands of her the said *J.* to be administered, except Goods and Chattels to the Value of ten Pounds, which are charged and bound with the Payment of the Money aforesaid upon the said Writing Obligatory, as is before related: and this she is ready to aver; whereupon she prays Judgment, if the said *D.* ought to have Execution aforesaid for the Damages, Costs, and Charges aforesaid: with this, that the same *J.*
is

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is willing to aver, that the said *W. H.* in the Writ of *Scire Facias* aforesaid named. And the aforesaid *W. H.* in the Writing Obligatory aforesaid named were one, and the same Person, and no other, nor different.

Riens per
Discent, nothing
by Descent,
pleaded by an
Heir.

— *As before* — And says, That he ought not to be charged with the Debt aforesaid, by virtue of the Writing aforesaid, as the Son and Heir of the aforesaid *B. T.* because by protesting that, that Writing is not the Deed of the aforesaid *B.* the Father, for a Plea the same *B.* the now Defendant says, That he hath not any Lands or Tenements by hereditary Descent of the aforesaid *B.* his Father in Fee Simple; nor had he on the Day of the exhibiting of the Bill aforesaid, or ever afterwards: And this he is ready to aver; whereupon he prays Judgment, if he ought to be charged with the Debt aforesaid, by virtue of the Writing aforesaid, as the Son and Heir of the aforesaid *B.* his Father.

The Replication.

And the aforesaid *L.* says, That he, for any thing by the aforesaid *B.* the now Defendant above in pleading alleged, ought not to be precluded from having his Action aforesaid thereupon against him; because he says, That the aforesaid *B.* the now Defendant at the

Time

Time of the exhibiting of the Bill aforesaid of him the said *L.* to wit, on the twenty third Day of *October*, in the third Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, had divers Lands and Tenements by hereditary Descent of the abovenamed *B.* his Father in Fee Simple, whereof he could have satisfied the same *L.* for his Debt aforesaid, to wit, at the Parish of Saint *Clement Danes* aforesaid, in the said County of *Middlesex*. And this he prays may be enquired by the Country, and the aforesaid *B.* the now Defendant likewise.

— *As before* — Because he says, That The Replication in another manner. the Bill of him the said *L.* whereof the aforesaid *L.* above complains, was exhibited on the twenty third Day of *October*, in the third Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*; and that the aforesaid *B.* the now Defendant, on the said Day of exhibiting of the Bill aforesaid into Court here, had divers Lands and Tenements by hereditary Descent from the abovenamed *B.* his Father in Fee Simple, whereof he could have satisfied the same *L.* for his Debt aforesaid, to wit, at the Parish of Saint *Clement Danes* aforesaid, in the

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the said County of *Middlesex*; and this he prays may be enquired by the Country, and the aforesaid *B.* the now Defendant likewise.

*Plea to a Bond,
That there was
a corrupt
Agreement.*

And the aforesaid *T.W.* by *J. E.* his Attorney, comes and defends himself against the Force and Injury laid by the aforesaid *M.* to his Charge, when, where, and in such a Manner as this Court shall award; and prays *Oyer* of the Writing Obligatory aforesaid, and it is read to him: He also prays *Oyer* of the Condition of the same Writing Obligatory, and it is read to him in these Words, to wit, The Condition of this Obligation is such, — (*and so recite the whole Condition*) — which being read and heard, the same *T.* says, that he ought not to be charged with the Debt aforesaid, by Virtue of the Writing Obligatory aforesaid, because he says, that on the aforesaid twenty ninth Day of *May*, in the abovesaid third Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, at *London* aforesaid, in the Parish and Ward aforesaid, there was a corrupt Agreement between the aforesaid *M.* and the abovenamed *T.* that the aforesaid *M.* should lend to the same *T.* the Sum of one hundred Pounds, and that he the said *T.* for giving and deferring

deferring the Day of the Payment of the said one hundred Pounds, until the aforesaid thirtieth Day of *November*, in the Condition aforesaid mentioned, should give to the same *M.* five Pounds of lawful Money of *Great Britain*, and thereupon, and according to the Form of the corrupt Agreement aforesaid, the aforesaid *M.* on the same twenty ninth Day of *May*, in the said Year, at *London* aforesaid, in the Parish and Ward aforesaid, did lend the aforesaid one hundred Pounds to the same *T.* and he the said *T.* then and there, for the giving and putting off the Day of the Payment of the said one hundred Pounds until the aforesaid thirtieth Day of *November*, according to the Form of the corrupt Agreement aforesaid, then and there paid the five Pounds to the same *M.* and then and there sealed to the same *M.* and as his Deed then and there delivered to the same *M.* the Writing Obligatory aforesaid, with the said Condition for the Payment of the aforesaid one hundred Pounds, which said five Pounds for the giving of the Day of Payment of the aforesaid one hundred Pounds for the Time aforesaid, so as is before related to be paid to the same *M.* exceeds the Sum of five Pounds for one Year. And this the same *T.* is ready to aver; whereupon he prays Judgment,

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Judgment, if the aforesaid *T.* ought to be charged with the Debt aforesaid, by Virtue of the Writing Obligatory aforesaid.

The Replication.

And the aforesaid *M.* says, that he, for any thing by the aforesaid *T.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against him, because he says, That there was no corrupt Agreement between the aforesaid *M.* and the above-named *T.* in Manner and Form as the aforesaid *T.* hath above in pleading alledged; and this he prays may be enquired by the Country.

The Defendant demurred to this Replication, in which the Plaintiff joined, and Judgment was given for the Plaintiff. The Form of a Demurrer to a Replication, and the joining in Demurrer. — See before. —

Defendant pleads that he gave a Bond in Discharge of the Promises mentioned in the Declaration.

And the aforesaid *T. W.* by *J. E.* his Attorney, comes — *as before* — and says, That the aforesaid *W. S.* and *B. S.* ought not to have or maintain their Action aforesaid thereupon against him, because he says, that after the making of the Promises and Assumptions in the Declaration aforesaid mentioned, to wit, on the first Day of *June*,
in

in the Year of our Lord One thousand seven hundred and thirty abovesaid, at *London* abovesaid, in the Parish and Ward abovesaid, he the same *T.* in full Satisfaction and Discharge of his several Promises and Assumptions abovesaid sealed, and as his Deed delivered to the same *W. S.* and *B. S.* a certain Writing Obligatory, bearing Date on the same Day and Year last abovesaid, by which said Writing Obligatory, he the same *T.* had granted himself to be held, and firmly bound to the abovenamed *W.* and *B.* in two hundred Pounds of lawful Money of *Great Britain*, to be paid to the same *W.* and *B.* when afterwards he should be thereunto required, under a Condition to the same Writing subscribed to pay to the same *W.* and *B.* the Sum of one hundred Pounds upon the twenty fifth Day of *March* then next following: Which said Writing Obligatory they the said *W.* and *B.* then and there received from the same *T.* in Discharge and Satisfaction of the Promises and Assumptions abovesaid, and this he the same *T.* is ready to aver; whereupon he prays Judgment, if the said *W.* and *B.* ought to have or maintain their Action abovesaid against him the said *T.*

And

The Replication.

And the aforesaid *W. S.* and *B. S.* say, that they, for any thing by the abovenamed *T.* above in pleading alledged, ought not to be precluded from having their Action aforesaid thereupon against the same *T.* because by protesting that the aforesaid *T.* did not give or deliver to the same *W. S.* and *B. S.* the Writing Obligatory aforesaid, in the said Plea abovementioned, in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid of him the said *T.* in Manner and Form as the aforesaid *T.* hath above in pleading alledged; for a Plea the same *W.* and *B.* say, that they the said *W.* and *B.* had not, nor did accept that Writing Obligatory from the same *T.* as he the same *T.* hath above in pleading alledged; and this the same *W. S.* and *B. S.* pray may be enquired by the Country, and the aforesaid *T.* likewise.

Plea by an Heir and Devisee jointly sued upon a Bond. Heir pleads nothing by Descent.

And the aforesaid *J. S.* in the Declaration aforesaid first mentioned, by *J. C.* his Attorney, and the aforesaid *J. S.* in the Declaration also mentioned, by *J. E.* his Attorney, come and defend themselves against the Force and Injury laid to their Charge, when, where, and in such a Manner as this Court shall award. And the aforesaid *J. S.* in the Declaration aforesaid first mentioned

mentioned says, That he ought not to be charged with the Debt aforesaid, as the Heir of the aforesaid N. his Grandfather, because by protesting, That that Writing Obligatory is not the Deed of the aforesaid N. for a Plea, the same J. says, that he has not any Lands or Tenements by hereditary Descent of the aforesaid N. his Grandfather, in Fee-simple, nor had he on the Day of the exhibiting of the Bill aforesaid, nor ever afterwards: And this he is ready to aver; whereupon he prays Judgment, if he ought to be charged with the Debt aforesaid, as the Heir of the aforesaid N. his Grandfather, by Virtue of the Writing Obligatory aforesaid.

And the aforesaid J. S. in the Declaration also mentioned, says, That he ought not to be charged with the Debt aforesaid, as the Devisee of the said N. by Virtue of the Writing Obligatory aforesaid, because by protesting that the aforesaid N. at the Time of his Death had nothing in Lands and Tenements aforesaid supposed to be devised to the said J. S. for a Plea he says, That he has not any Lands, Tenements, or Hereditaments by Virtue of the last Will and Testament of the said N. nor had he on the Day of the exhibiting of the Bill of the aforesaid W. S. nor ever afterwards,

*Devisee pleads;
That the Testator had no Lands, neither hath he by Virtue of his last Will.*

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wards: And this he is ready to aver; whereupon he prays Judgment, if he ought to be charged with the Debt aforesaid, as the Devisee of the aforesaid *N.* by Virtue of the Writing aforesaid.

The Replication

And the aforesaid *W.* says, That the aforesaid *J. S.* the Heir, for any thing before alledged, ought not to be discharged from the Debt aforesaid, as Heir of the abovenamed *N.* by Virtue of the Writing aforesaid; because he says, That he the same *J. S.* the Heir, at the Time of the exhibiting of the aforesaid Bill of him the said *W.* to wit, on the nineteenth Day of *April*, in the Year of our Lord one thousand seven hundred and twenty-seven, had divers Lands and Tenements sufficient by hereditary Descent of the aforesaid *N.* his Grandfather, in Fee Simple, whereof he could have satisfied the same *W.* for his Debt aforesaid, to wit, at *East Grinstead* aforesaid, in the County aforesaid; and this he prays may be enquired by the Country, and the aforesaid *J. S.* the Heir likewise.

*The other
Replication.*

And the aforesaid *W.* says, That the aforesaid *J. S.* the Devisee, for any thing before alledged, ought not to be discharged from the Debt aforesaid, as Devisee of the abovenamed *N.* by
Virtue

Virtue of the Writing aforesaid ; be-
 cause he says, That he same *J. S.* the
 Devisee at the Time of the exhibiting
 of the aforesaid Bill of him the said *W.*
 to wit, on the nineteenth Day of *April*,
 in the Year of our Lord one thousand
 seven hundred and twenty seven, had
 divers Lands and Tenements sufficient,
 by virtue of the last Will and Testa-
 ment of the aforesaid *N.* in Fee Simple,
 whereof he could have satisfied the
 same *W.* for his Debt aforesaid, to wit,
 at *East Grinstead* aforesaid in the County
 aforesaid : And this he prays may be
 enquired by the Country, and the afore-
 said *J. S.* the Devisee likewise. There-
 fore let a Jury come thereupon, as ^{*Jury awarded*}
 well to try the aforesaid Issue above ^{*to try both the*}
 joined, between the abovenamed *W.* and ^{*Issues.*}
 the said *J. S.* the Heir ; as also the
 said other Issue joined between the
 abovenamed *W.* and the aforesaid *J. S.*
 the Devisee, before our Lord the King.
 —and so on, as in another Issue.—

And the aforesaid *J.* says, That he, ^{*A Replication*}
 for any thing by the aforesaid *H.* above ^{*(to a Plea (Non*}
 in pleading alledged, ought not to be ^{*assumpsit infra*}
 precluded from having his Action afore- ^{*sex annos) He*}
 said thereupon against him the said *H.* ^{*made no such*}
 because he says, That before the exhi- ^{*Promise within*}
 biting of the Bill aforesaid, to wit, in ^{*(six Years), That*}
 the Term of Saint *Michael*, in the se- ^{*a Latitat was*}
 cond ^{*sued out within*}
 the Time.

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cond Year of the Reign of our said Sovereign Lord *George* the Second, now King of *Great Britain*, the same *J.* had prosecuted against him the said *H.* out of the Court of our said Lord the now King before the King himself, (the same Court then being at *Westminster* in the County of *Middlesex*) a certain Writ of our said Lord the King, called a *Latitat*, directed to the then Sheriff of the County of *Essex*; by which said Writ our said Lord the King commanded the said then Sheriff, That he should take the aforesaid *H.* if he might be found in his Bailiwick, and keep him safely, so that he should have his Body before our said Lord the King at *Westminster*, on *Thursday* next after fifteen Days of Saint *Martin*, (then next following) to answer to the abovenamed *J.* of a Plea of Trespass, and to a Bill of him the said *J.* against him the said *H.* for fifteen Pounds upon Promise, according to the Custom of the Court of our said Lord the King, before the King himself to be exhibited; and that he should then have there that Writ: The same Day was given to the abovenamed *J.* at the same Place: And that Writ being in due manner affiled of Record in the said Court of our said Lord the now King here, to wit,
at

at *Westminster* aforesaid; at the same Day, to wit, at the said *Thursday* next after fifteen Days of Saint *Martin*, before our Lord the King at *Westminster* aforesaid, he the same *J.* came in his own proper Person, and then offered himself against the abovenamed *H.* of the Plea aforesaid. And the then Sheriff of *Essex* aforesaid, to wit, *W. A.* Esquire, at the same Day returned, That the aforesaid *H.* was not found in his Bailiwick, and the aforesaid *H.* came not; therefore the same *J.* prayed another Writ thereupon in Form aforesaid to the then Sheriff of *Essex* aforesaid directed, and it was granted to him returnable here on *Thursday* next after eight Days of Saint *Hillary* then next following. The same Day was given to the same *J.* here; at which Day, to wit, at the aforesaid *Thursday* next after eight Days of Saint *Hillary*, before our Lord the King at *Westminster*, the same *J.* came in his own proper Person, and offered himself against the abovenamed *H.* of the Plea aforesaid; and the Sheriff did nothing thereupon, nor sent the Writ aforesaid last mentioned directed to him in Form aforesaid, and the aforesaid *H.* came not; therefore the same *J.* prayed

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another Writ thereupon in Form afore-
 said to the then Sheriff of *Essex* afore-
 said directed, and it was granted to
 him, returnable here on *Wednesday*
 next after fifteen Days of *Easter* then
 next following. The same Day was
 given to the same *J.* here ; at which
 Day, to wit, at the aforesaid *Wednesday*
 next after fifteen Days of *Easter*, before
 our Lord the King at *Westminster*, the
 same *J.* came in his own proper Person,
 — (and so enter your Continuances
 down to the last *Latitat* sued forth
 exact as before, the Returns of the
 Writs only being altered) — At which
 Day, to wit, at the aforesaid *Friday*
 next after the morrow of the *Holy*
Trinity, before our Lord the King
 at *Westminster*, the same *J.* came in
 his own proper Person, and offered
 himself against the abovenamed *H.* of
 the Plea aforesaid ; and the Sheriff did
 nothing thereupon, nor sent the Writ
 aforesaid last mentioned directed to him
 in Form aforesaid, and the aforesaid *H.*
 came not ; therefore the same *J.* prayed
 another Writ of our said Lord the King
 of *Latitat* to the Sheriff of *Somerset-*
shire directed : And it was granted to
 him by the Court here, by which said
 last mentioned Writ, our said Lord the
 King commanded the said then Sheriff
 of

of *Somersetshire*, That he should take the aforesaid *H.* if he might be found in his Bailiwick, and keep him safely, so that he should have his Body before our said Lord the King at *Westminster*, on *Monday* next after the morrow of *Saint Martin* then next following, to answer to the abovenamed *J.* of a Plea of Trespass, and also to a Bill of him the said *J.* against him the said *H.* for fifteen Pounds upon Promise, according to the Custom of the Court of our said Lord the King, before the King himself to be exhibited; and that he should then have there that Writ. The same Day was given to the abovenamed *J.* at the same Place; which said several Writs so by him the said *J.* against the same *H.* sued forth, were sued forth by him the said *J.* with that Intention to prosecute the abovenamed *H.* upon his Promise and Assumption in the Declaration aforesaid above specified; and to declare against the same *H.* according to the Custom of the Court of our said Lord the King here, from the Time of the contrary whereof is not in the Memory of Man used and approved in the same upon the Appearance of him the said *H.* in the same Court at the Suit of him the said *J.* of the Plea aforesaid: And at the same Day, to wit,

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on *Monday* next after the morrow of *Saint Martin*, the aforesaid *J.* came before our Lord the King at *Westminster* in his own proper Person, and offered himself against the abovenamed *H.* of the Plea aforesaid: And the abovenamed *H.* at the same Day, by the aforesaid *T. L.* his then Attorney, in like manner came in the same Court of our said Lord the King here, and according to the Use and Custom of that Court, affiled his Bail in the same Court at the Suit of him the said *J.* in the Plea aforesaid: Whereupon the same *J.* in that same Term of *Saint Michael*, in the fourth Year abovesaid, by the aforesaid *T. N.* his Attorney, according to the Custom in the same Court of our said Lord the King here, from the Time of the contrary whereof is not used and approved in the Memory of Man, by his Bill aforesaid hath above declared against the same *H.* in the Custody of the Marshal of the *Marshalsey* of our said Lord the King, before the King himself being, in Manner and Form aforesaid, with that Intention, That he the same *J.* should recover his Damages against the aforesaid *H.* for the not performing of his Promises and Assumptions in the aforesaid Bill of him the said *J.* above specified: And the

the same *J.* further says, That the
aforesaid *H.* within six Years next be-
fore the Prosecution of the aforesaid
Writ of *Latitat* first abovementioned
against him the said *H.* did assume upon
himself in Manner and Form as the
same *J.* hath above thereupon declared
against him: And this he is ready to
aver; whereupon he prays Judgment
and his Damages by the Occasion of
the Premises to be judged to him; with
this, that the same *J.* is willing to
aver, That the Cause of Action in the
Bill aforesaid abovementioned, and the
Cause of Action, for which the afore-
said several Writs of *Latitat*, that
were prosecuted out of the same Court
here against the same *H.* at the Suit of
the same *J.* are one and the same
Cause of Action, and no other nor dif-
ferent; and that the aforesaid *J.* the
now Plaintiff in the Bill aforesaid above-
named, and the aforesaid *J.* in the a-
foresaid several Writs above in like
manner named, are one and the same
Person, and no other nor different; and
that the aforesaid *H.* in the Bill afore-
said abovenamed Defendant, and the
aforesaid *H.* in the aforesaid several
Writs above in like manner named, are
one and the same Person, and no other
nor different.

And

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(Son Assault
Demefne.)

That the Plain-
riff made the
first Assault
on the Defend-
ant.

And the aforesaid *C.* by *J. E.* his Attorney, comes and defends himself against the Force and Injury laid to his Charge, when, where, and in such a Manner as this Court shall award; and as to the coming with Force and Arms, or whatsoever is against the Peace of our said Lord the now King, he says, That he is not guilty thereof; and of this he puts himself upon the Country, and the aforesaid *A.* likewise: And as to the remaining Trespas aforesaid above supposed to be done, the same *C.* says, That the aforesaid *A.* ought not to have or maintain his Action aforesaid thereupon against him; because he says, That the aforesaid *A.* on the Day and Year aforesaid in the Declaration of the said *A.* above specified, at *Maidstone* aforesaid, in the County aforesaid, with Force and Arms upon him the said *C.* made an Assault, and would then and there have beat, wounded, and evil treated him the said *C.* unless the same *C.* had then and there sooner defended himself against the abovenamed *A.* And so the same *C.* says, That the Mischief or Damage, if that any then and there happened to the same *A.* was the proper Assault of him the said *A.* and in Defence of him the said *C.* And this he is ready to aver; whereupon he prays Judgment, if the aforesaid

aforesaid *A.* ought to have or maintain his Action aforesaid thereupon against him.

And the aforesaid *A. B.* says, That The Replica-
tion. (De In-
juria sua pro-
pria) of his
own proper
Injury. he, for any thing by the aforesaid *C. D.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against him the said *C.* because he says, That the aforesaid *C.* of his own proper Injury, and without any such Cause by him the said *C.* above in pleading alledged, upon him the said *A.* made an Assault, and beat, wounded, and evil treated him the said *A.* in Manner and Form as the aforesaid *A.* above complains against him: And this he prays may be enquired by the Country, and the aforesaid *C.* likewise. Therefore let a Jury come thereupon, as well to try that Issue, as the other Issue aforesaid, between the Parties aforesaid above joined, before our Lord the King, — as before.

In the Common Pleas.

And the aforesaid *C.* by *T. M.* his Plea, That
the Action did
not accrue
within six
Years. Attorney, comes and defends himself against the Force and Injury laid to his Charge, when, where, and in such a Manner as this Court shall award, and says, That the aforesaid *A.* ought not to have

The Clerk's

have his Action aforesaid thereupon against him, because he says, That the said several Causes of Action in the Declaration aforesaid abovementioned hath not accrued, neither hath either of them accrued to the aforesaid *A.* at any Time within six Years next before the Day of the obtaining of the Original Writ of the aforesaid *A.* And this he is ready to aver; whereupon he prays Judgment, if the aforesaid *A.* ought to have his Action aforesaid against him.

The Replication

And the aforesaid *J.* says, That he, for any thing before alledged, ought not to be precluded from having his Action aforesaid; because he says, That the said several Causes of Action in the Declaration aforesaid abovementioned have accrued, or one of them did accrue to the aforesaid *A.* within six Years before the Day of the obtaining of the Original Writ of him the said *A.* to wit, on the third Day of *October*, in the abovesaid fifth Year of the Reign of our said Lord the now King, at *London* aforesaid, in the Parish and Ward aforesaid, in Manner and Form as he the said *A.* above complains against him: And this he prays may be enquired by the Country.

Plenit administravit, she hath fully administered.

And the aforesaid *A.* by *T. N.* her Attorney, comes and defends herself against

against the Force and Injury laid to her Charge, when, — (*as before*) — and says, That the aforesaid *J.* ought not to have or maintain his Action aforesaid thereupon against her; because she says, That she the abovenamed *A.* hath fully administered all the Goods and Chattels which were of the aforesaid *T.* at the Time of his Death, and that she the said *A.* has no other Goods or Chattels which were of the aforesaid *T.* at the Time of his Death in her Hands to be administered, nor had she on the Day of the obtaining of the Original Writ of him the said *J.* nor ever afterwards: And this she is ready to aver; whereupon she prays Judgment, if the aforesaid *J.* ought to have or maintain his Action aforesaid thereupon against her.

And the aforesaid *J.* says, That he, *The Replication.* for any Thing by the said *A.* above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against her, because he says, That the aforesaid *A.* hath, and on the Day of the obtaining of the Original Writ aforesaid of him the said *J.* to wit, on the twenty-third Day of *October*, in the fifth Year of the Reign of our said Lord the now King, at *London* aforesaid, in the Parish and Ward aforesaid, had divers Goods and Chattels,

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tels, which were of the aforesaid T. at the Time of his Death in her Hands to be administered, to the Value of one thousand Pounds, whereof she might have satisfied the same J. for his Debt aforesaid, to wit, at *London* aforesaid, in the Parish and Ward aforesaid : And this he prays may be enquired by the Country, and the aforesaid A. likewise.

*Pleads, That
he is one of
the Attornies
of the Court of
Common
Pleas.*

And the aforesaid H. in his own proper Person comes and defends himself against the Force and Injury laid to his Charge, and says, That he ought not to be compelled to answer to the Original Writ of the aforesaid A. because he says, That he is, and on the Day of the obtaining of the Original Writ aforesaid, and long before, was one of the Attornies of the Court of our Lord the King of the Bench here ; and that in the same Court there is, and from the Time of the contrary whereof is not in the Memory of Man, there was such a Custom here used and approved, to wit, that no Attorney of the same Court, should against his Will be compelled to answer any one in any personal Action, which does not relate to our Sovereign Lord the King in Court here, upon an Original Writ obtained, or in any other Manner, unless by Bill only against such Attorney to the Ju-

stices

stices here exhibited. And the same *H.* further says, That he is drawn into a Plea in Court here by the Original Writ aforesaid, to answer to the abovenamed *A. L.* of a Plea of Trespass upon the Case against his Will and the Custom aforesaid: And this he is ready to aver; whereupon, for that That the same *H.* is one of the Attornies of the Court here, and on the Day of the obtaining of the Original Writ aforesaid and long before was, he prays his Privilege aforesaid to be allowed to him, and that he may not answer to the Writ aforesaid.

And the aforesaid *A.* says, That she, ^{Replication,} for any thing before alledged, ought ^{That he was} not to be hindered from the Answer of ^{fore-judged} the aforesaid *H.* to her Writ aforesaid, ^{the Court at} because she says, That she the same *A.* ^{the Suit of the} heretofore, to wit, in the Term of ^{said Plaintiff.} *Easter*, in the fifth Year of the Reign of our Lord the now King in Court here, to wit, at *Westminster*, in the County of *Middlesex*, as Administratrix of the Goods, Rights, and Credits, which were of one *T. L.* her late Husband, deceased, at the Time of his Death, who died Intestate, by the said *W. B.* her Attorney, had impleaded the aforesaid *H.* by Bill, as one of the Attornies of the Court of our Lord the King of the Bench here, in a certain Plea of
Trespass

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Trespas upon the Case, to the Damage of her the said *A.* of fifty Pounds. Whereupon the aforesaid *H.* afterwards, to wit, in the same Term of *Easter*, by the same Court here was solemnly called, and did not appear to answer the same *A.* in her Plea aforesaid, whereby in that same Term, by the same Court here, for his Contumacy in that Particular, the same *H.* was forejudged from exercising his Office of an Attorney of this Court, as by the Record thereof, here remaining in full Force and Effect, may more plainly appear: And this she is ready to aver; whereupon she prays Judgment, and that the aforesaid *H.* may make a further Answer to her Writ aforesaid.

*The Rejoinder.
That there is
no such Record.*

And the aforesaid *H.* says, That he, for any Thing by the aforesaid *A.* above in her Replication alledged, ought not to be compelled to answer to the Original Writ of the aforesaid *A.* because he says, That there is no such Record of Fore-judger against the aforesaid *H.* at the Suit of the aforesaid *A.* as the aforesaid *A.* hath above in her Replication alledged; therefore, as before, he prays his Privilege aforesaid to be allowed to him, and that he may not answer to the Original Writ aforesaid.

And

And the aforesaid *A.* as before, says, ^{Surrejoinder.}
That there is such a Record of Fore-^{That there is}
judger against the aforesaid *H.* at the ^{such a Record}
Suit of the said *A.* as the aforesaid *A.* ^{against the said}
hath above in her Replication alledged: ^{Defendant at}
^{the Suit of the}
^{said Plaintiff.}

And this she is ready to aver by that
Record; and the same *A.* is ordered
to have that Record before the same
Justices of our Lord the King at *West-*
minster, on *Wednesday* next after three
Weeks of the *Holy Trinity* at her Peril.
The same Day is given to the above-
named *H.* here; at which Day here
came as well the aforesaid *A.* by her
Attorney aforesaid, as the aforesaid *H.*
in his own proper Person: And there-
upon the same *A.* brings here into
Court the Record of Fore-judger, which
said Record by the Justices here having
been seen and fully understood, it is
evident and sufficiently appears to the
same Justices here, that there is such a
Record of Fore-judger as the aforesaid
A. hath above in her Replication al-
ledged, whereby it is ordered here by
the Court to the same *H.* that he make
a further Answer to the abovenamed *A.*
to her Writ and Declaration aforesaid.

Cooke.

Be it remembered, That on the tenth
Day of *April* in this same Term *L. H.*
Esquire, by *J. E.* his Attorney came
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The Entry of a
Fore-judger,
upon a Bill a-
gainst an At-
torney of the
Court of Com-
mon Pleas.

The Clerk's

here into Court, and exhibited to the Justices of our Lord the King here his certain Bill against *T. B.* Gentleman, one of the Attorneys of the Court of our said Lord the King of the Bench here, being present here in Court in his own proper Person, of a Plea that he render to him his reasonable Account for the Time wherein he was Receiver of the Money of him the said *L.* the Tenor of which said Bill follows in these Words: To the Justices of our Lord the King of the Bench. *London*, to wit, *L. H.* Esquire, by *J. E.* his Attorney, complains of *T. B.* Gentleman, one of the Attorneys of the Court of our Lord the King of the Bench here, being present here in Court in his own proper Person, of a Plea — (*and so recite the whole Bill*) — and thereof he prays Remedy. Pledges of prosecuting *John Doe* and *Richard Roe*.

Whereupon the aforesaid *T.* by reason of whose Office of an Attorney it concerns to be present here in Court, being solemnly called to appear and answer the abovenamed *L.* of and in the Plea aforesaid, came not, nor alledged to the Court here any other Cause of his Absence. Therefore it is considered that the aforesaid *T.* for his Contumacy
afore-

aforesaid, be forejudged from his Office aforesaid; and that he should be entirely struck out from the Roll of the Attorneys of this Court, until —

And the aforesaid *A.* by *W. B.* her Attorney comes, and prays Oyer of the Writ aforesaid, and it is read to her in these Words; *George the Second, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, — and so on, reciting the whole Attachment*); which being read and heard, the same *A.* saving to herself all and all manner of Advantages and Exceptions, as well to the Writ as to the Declaration aforesaid, prays leave to imparle thereon here until *Friday* next after the morrow of the *Holy Trinity*, and she hath it: The same Day is given to the abovenamed *H.* here: at which Day came here as well the aforesaid *H.* in his own proper Person, as the aforesaid *A.* by her Attorney aforesaid: And the aforesaid *A.* prays Judgment of the Writ aforesaid; because she says, That she the same *A.* heretofore, to wit, in the Term of *Easter* then last past in Court here, to wit, at *Westminster* in the County of *Middlesex*, as Administratrix of the Goods, Rights, and Credits, which were of one *T. L.* her late Husband

Pleads, to an Action brought by an Attorney That the Attorney was fore-judged the Court at the Suit of the said Defendant; with a special Imparance.

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deceased at the Time of his Death, who died intestate by the aforesaid *W. B.* her Attorney, had impleaded the aforesaid *H.* by Bill, as one of the Attorneys of the Court of our Lord the King of the Bench here, in a certain Plea of Trespass upon the Case, to the Damage of her the said *A.* of fifty Pounds: Whereupon the aforesaid *H.* afterwards, to wit, in the same Term of *Easter*, by the same Court here was solemnly called, and did not appear to answer to the same *A.* in her Plea aforesaid; whereby he after the issuing of the aforesaid Writ of Priviledge, and before the Return thereof, to wit, on *Saturday* next after fifteen Days of *Easter*, in that same Term by the same Court here, for his Contumacy in that Particular was forejudged from exercising his Office of Attorney of this Court, until; — And the same *H.* hath not hitherto appeared to that Bill, as by the Record thereof here remaining in full Force and Effect may more plainly appear: And this she is ready to aver; whereupon she prays Judgment, if the aforesaid *H.* ought to be permitted to declare upon his Writ aforesaid, notwithstanding the said Record, and that That Writ may be quashed.

And

And the aforesaid *C.* by *J. E.* his ^(Solvit ad diem.) Attorney comes, and defends himself ^{That he paid the Money according to his Promise.} against the Force and Injury (laid by the aforesaid *A. B.* to his Charge) when, where and in such a manner as this Court shall award, and says, That the aforesaid *A.* ought not to have his Action aforesaid thereupon against him; because he says, That after his Promises and Undertakings aforesaid, in Form aforesaid made, and before the Day of suing forth the Original Writ of the aforesaid *A.* to wit, on the first Day of *October*, in the abovesaid third Year of the Reign of our said Lord the now King, he the same *C.* at *Maidstone* aforesaid, well and faithfully paid to the abovenamed *A.* the aforesaid twenty Pounds, according to his Promises and Undertakings aforesaid: And this he is ready to aver; whereupon he prays Judgment, if the aforesaid *A.* ought to have his Action aforesaid thereupon against him.

And the aforesaid *A.* says, That he, ^{The Replication} for any thing by the aforesaid *C.* before alledged, ought not to be precluded from having his Action aforesaid, because he says, That the aforesaid *C.* did not pay to the same *A.* the aforesaid twenty Pounds, in Manner and Form as the aforesaid *C.* hath above in Pleading

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ing alledged; And this he prays may be enquired by the Country, and the aforefaid *C.* likewise. Therefore the *Jury awarded.* Sheriff is commanded, That he cause to come here from the Day of the *Holy Trinity* in three Weeks, twelve free and lawful Men, by whom the Truth of the Matter may be better known, and who are neither of Kin to the aforefaid *A. B.* nor to the aforefaid *C. D.* to recognize a Verdict between the Parties aforefaid; because as well the same *A. B.* as the same *C. D.* have put themselves upon the same Jury,

(Nonassumpfit
infra sex an-
nos.) He made
no such Promise
within six Years

And the aforefaid *C.* by *J. E.* his Attorney comes, — (*as above to*) — and says, That the aforefaid *A.* ought not to have his Action aforefaid thereupon against him; because he says, that he made no such Promise at any Time within six Years before the Day of the suing forth of the original Writ of him the said *A.* in Manner and Form as the aforefaid *A.* above declares against him: And this he is ready to aver; whereupon he prays Judgment, if the aforefaid *A.* ought to have his Action aforefaid thereupon against him.

The Replication

And the aforefaid *A.* says, That he, for any thing by the aforefaid *C.* before alledged, ought not to be precluded from having his Action aforefaid; be-
cause

cause he says, That the aforesaid C. did within six Years before the Day of suing forth the original Writ of him the said A. to wit, on the aforesaid twenty third Day of *October*, in the abovesaid fourth Year of the Reign of our said Lord the now King, at *East Grinstead* aforesaid, make such Promise in Manner and Form, as he the said A. above declares against him, and this he prays may be enquired by the Country, and the aforesaid C. likewise.

— *As before to* — This Court shall award. And as to the first, second, and third Promises in the Declaration aforesaid abovementioned, he says, That he did not make any such Promises in Manner and Form as the aforesaid A. above thereupon complains against him : And of this he puts himself upon the Country, and the aforesaid A. thereupon likewise. And as to the said last Promise in the same Declaration above in-like manner mentioned, he says, That the aforesaid A. ought not to have his Action aforesaid thereupon against him, because he says, That he the said C. after that Promise and Undertaking in Form aforesaid made, and before the Day — *and so on as in the Plea before* — That he paid the Money according to the Promise.

(Non assumpsit,) He made no such Promise to the first, second, and third Counts and Payments to the rest.

Issue.

The Clerk's

The Replication

And the aforesaid *A.* says, That he; for any Thing by the aforesaid *C.* before alledged, ought not to be precluded from having his Action aforesaid, as to the aforesaid last Promise in the Declaration abovementioned; because he says, That the aforesaid *C.* did not pay to the same *A.* the aforesaid fifty Pounds in Manner and Form as the aforesaid *C.* hath above in pleading alledged: And this he prays may be enquired by the Country, and the aforesaid *C.* likewise. Therefore the Sheriff is commanded, that he cause to come here from the Day of the *Holy Trinity* in three Weeks, twelve free and lawful Men, as well to try that Issue as the other Issue aforesaid, between the Parties aforesaid abovejoined, by whom the Truth — *as before.* —

Non sum informatus,
(I am not informed,) to one
Promise; and
Non assumpsit
(He made no such Promise,
to the other.

And the aforesaid *C.* — (*exact as before to*) — award. And as to the first Promise aforesaid, the same Attorney says, That he is not informed by the same *C.* his Master, of any Answer to be given for the same *C.* to the abovenamed *A.* in the Complaint aforesaid; and he says no other Thing thereof, whereby the same *C.* doth thereof remain against the abovenamed *A.* undefended. Therefore it is considered, that the same *A.* ought to recover

cover

cover against the abovenamed *C.* his Damages by the occasion of the not performing that first Promise and Undertaking aforesaid : And as to the second Promise, the aforesaid *C.* says, That he the said *A.* ought not to have his Action aforesaid thereupon against him the said *C.* ; because he says, That he made no such Promise in Manner and Form as the aforesaid *A.* above declares against him : And of this he puts himself upon the Country, and the aforesaid *A.* thereupon likewise. And because it is convenient and necessary that there may be only one Taxing of the Damages aforesaid by the Occasion of the Premises, therefore let the Writ of Enquiry for the Damages by the occasion of the Premises cease, until the Issue between the Parties aforesaid above joined shall be ended. Therefore the Sheriff is commanded, that he cause to come here in eight Days of the Purification of the Blessed *Mary*, twelve free and lawful Men, as well to try the Issue aforesaid between the Parties aforesaid above joined, as to enquire what Damages the same *A.* in this Particular hath sustained ; by whom the Truth —
— *as before* —

It

*Limitation of
Actions.*

It may be observed from the Precedents aforesaid, That one may have good Cause of Action, and yet lose or be barred in the same, for not prosecuting it in due time; which time for bringing of Actions was limited by the Statute of 21. Jac. I. chap. 16. called the Statute of Limitations, which enacts, That all Actions upon the Case (other than for Slander) Actions for Account (other than for Merchandize), Actions of Trespass, Debt, Detinue, Trover, and Replevin, shall be commenced within six Years after the Cause of such Action or Suit, and not after.

All Actions of Trespass, of Assault, Battery, Wounding, and Imprisonment, within four Years after the Cause of Suit, and not after.

The Right of Action in the Cases aforesaid is saved to an Infant, *Feme Covert*, (*Non Compos Mentis*), Not of sound Mind, a Person imprisoned, or beyond Sea; so as they commence their Suits within the Times limited, respectively after their Imperfections removed.

Provided also, That if in any such Actions Judgment be given for the Plaintiff, and the same be reversed by Error, or a Verdict pass for him, and upon Motion in Arrest of Judgment it

is given against him ; or if the Defendant be Outlawed in the Suit, and after reverse the Outlawry : in these Cases the Plaintiff, his Heirs, Executors, or Administrators, may commence a new Action, within a Year after such Judgment reversed, or given against the Plaintiff or Outlawry reversed, and not after.

And by another Statute of Limitations, to wit, by 4. and 5. of Q. Anne, *Stat. 4. and 5. of Q. Anne.* chap. 16. for the Amendment of the Law (Part whereof is before set forth), *Another Act for Limitation of Actions.* it is Enacted, That all Suits in the Admiralty for Seamen's Wages shall be commenced in six Years after the Cause of Action : Provided, that if the Person entitled to such Suit be within Age, *Feme Covert*, *Non Compos*, imprisoned, or beyond Sea ; then such Person may bring the Action within six Years after full Age, Discover, of Sound Mind, at Large, and Return.

And if any Person against whom Cause of Action for Seamen's Wages, or for Trespass, Detinue, Trover, Replevin, Account, Case, or Debt, grounded on Contract, or Lending, or for Rent, shall at the Time of such Cause of Suit accrued, be beyond Seas ; then the Person entitled to such Suit may bring an Action after the Return of such

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such Person, so he bring the same with-
in such Time after the Return, as is
limited by this Act, and the 21st of
Jac. I. cap. 16.

Also by this Act it is provided, That
the Salary, Wages, or Pay, due to
Persons for Work done in any of her
Majesty's Yards or Docks, shall not be
decmed *Bona Notabilia*, whereby to
found the Jurisdiction of the Preroga-
tive Court, to grant the Probate of
Wills or Letters of Administration.

And that Actions of Account may
be brought against Executors and Ad-
ministrators of every Guardian, Bailiff,
and Receivers, and by one joint Ten-
nant and Tennant in common, his Exe-
cutors and Administrators, against the o-
ther as Bailiff, for receiving more than
his just Share, and against their Exe-
cutors and Administrators: and the
Auditors shall examine the Parties about
the Matter in question upon Oath, and
shall be allowed as the Court shall
judge reasonable, by the Party on
whose Side the Balance shall be.

Note, The mistaking of an Action is
no Bar (or Estoppel) to the bringing
of a new Action.

Note

Note further, That notwithstanding these Statutes, if you sue out an Original or a *Latitat* within the Time limited by the Statutes, it is a good bringing of the Action in due time, and the Plaintiff will not be barred, although he should not declare within the limited Time: but the Sheriff should return, That the Defendant is not to be found, and the Writ ought to be entered on the Roll and affiled.

Of the Venue, or laying of Actions.

I SHALL here observe to you, where the Venue, or Cause of Action, should be laid: And first, That all real *Local Actions.* and mixed Actions, as Waste, Ejectment, and the like, must be laid in the same County where the Land lyeth, for they are local Actions; so are Trespasses for breaking the Close and the same Places, calling them by their proper Names, in the Parish of where the Wrong was done, must be set down in the Declaration: But all Personal *Transitory Actions.* Actions, and all Transitory Actions, as Debt, Detinue, Assault, Amnity, Account,

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*Against an
Officer.*

count, and the like, may be brought in any County, and laid where the Plaintiff pleases; and the Defendant cannot by pleading traverse it, and say it was done in another Place, except it be against an Officer (and that by *Stat. 21. Jac. c. 12.*) who hath special Cause of Justification by his Office as to the Place; and by this Statute he may plead the general Issue, and give the special Matter in Evidence; and if the Plaintiff is Non-suited, or he found not guilty, he shall have double Cost.

Transitory Actions ought to be laid in the proper County, or the Venue may be changed.

If an Action be brought against an Officer, for any thing done about his Office, it must be laid in the County where the Fact was committed: And observe, it is the fairest and most indifferent Way, to lay transitory Actions in the County where they first arose; for otherwise the Court will upon an Affidavit and Motion made by Council, alter the Venue, unless the Plaintiff will be bound to give Evidence in the Place where he hath laid his Action: Notice should be given of such Motion, and the Affidavit may be as follows,

Between { *A. B.* Plaintiff,
 and
 { *C. D.* Defendant.

C.

English Tutor.

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C. D. of — the Defendant in this Cause maketh Oath, That the Cause of Action mentioned in the Declaration delivered in this Cause (if any such there be) did arise in the County of *Northampton*, and not in the City of *London*, nor elsewhere, out of the said County of *Northampton*. An Affidavit to change the Venue.

Sworn at —

C. D.

Some Actions may be laid in one Place or another at the Plaintiff's Election, as by a Lessor against the Lessee for Rent, may be brought where the Land lies, or where the Demise was made; but when such Action is brought by or against an Assignee, it must be where the Land lies. Otherwise of Covenant, see Page 47. Plaintiff's Election for Rent, not against an Assignee.

So Debt by an Executor of a Grantee of a Rent Charge for Arrears, must be where the Land lies; and so Debt for Rent by the Devisee of a Reversion, shall be where the Land lies. *Winch. 69.* And this in respect of Privity of the Contract. *Styles Reg. 33.* Grantee. Devisee.

See more, what Actions are Local, and what Transitory. 1. *Saund. 238.* 239.

Nor may it be amiss to observe briefly, who can or cannot maintain an Action; Who can, or cannot bring an Action.

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Action; and of the latter Sort are Persons attainted of Treason or Felony. So Persons Outlawed and Excommunicated, Persons convict of *Premunire*; or professed in Orders of the Papal Religion, as Friars, Monks, and the like. These though they are liable to be sued, cannot maintain any Action in their own right, during the Time they continue thus disabled; yet they may sue as Executors or Administrators being in another Right, so far as is needful for the Performance of their Trust; and after their Impediments are removed, they may bring their Actions as well as other Persons.

All other Persons, Man, Woman, or Child, whether Ideot, Mad, or Deaf, or Dumb, may bring an Action proper for their Remedy, and may be sued for Injuries done by them.

Infant.

An Infant must sue by his next Friend or Guardian, unless he sue as Executor, and then he may sue by his Attorney; for that Executors represent the Testator, and must appear by his Guardian. But an Ideot must sue, and be sued in his proper Person: And

Ideot.

Executor.

Executors when they bring an Action must all be named; but when an Action is brought against them, it must be

only

only against such of them as do administer.

The Married Woman must sue and be sued with her Husband; for the Wife can in no wise sue alone after the Marriage, nor be sued in any Case without him for any thing she hath done, except by the Custom of the City of *London*, as being a sole Merchant; and even there, for Conformity sake, I think the Husband is named.

Married Woman.

Some Actions are destroyed by Death, according to the Maxim, *Actio Personalis moritur cum Persona*; — as Battery, Escape against a Keeper of a Prison, Waste against a Lessee, and the like; and formerly by the Death of either Plaintiff or Defendant, a Suit abated, which is now otherwise, if such Suit might have been originally prosecuted by or against Executors and Administrators, by the Act of Parliament, Entitled, *An Act for the better preventing frivolous and vexatious Suits*, which passed in the 8th and 9th of *Will. III.* the whole of which Act being very useful, and therefore necessary to be known, you have here abstracted as follows, to wit,

Actions Personal dye with the Person.

That after the twenty-fifth of *March*, 1697. where several Persons shall be

Abstract of the 8th and 9th of Will. III.

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made

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made Defendants to any Action of Trespase, Assault, false Imprisonment, or *Ejectione Firme*, and any one or more shall upon Trial be acquitted by Verdict, every Person so acquitted shall recover his Costs of Suit, unless the Judge shall immediately after the Trial in open Court certify upon the Record, that there was a reasonable Cause for making such Person or Persons a Defendant or Defendants to such Action.

After the said 25th of *March*, if any Person shall commence in any Court of Record, any Action or Suit, wherein upon Demurrer Judgment shall be given against the Plaintiff or Defendant; or if at any time after Judgment given for the Defendant, the Plaintiff shall sue a Writ of Error, and the said Judgment shall be affirmed, or the said Writ discontinued, or the Plaintiff nonsuit therein; the Defendant shall have Judgment to recover his Costs against such Plaintiff, and Execution by *Capias ad Satisfaciendum*, *Fieri Facias*, or *Elegit*.

After the said 25th of *March*, in all Actions of Waste and Debt, upon the Statute for not setting forth of Tithes where the Damage found by the Jury shall not exceed twenty Nobles, and in all Suits upon Writs of *Scire Facias*,
and

and upon Prohibitions, the Plaintiff obtaining Judgment, or Award of Execution, after Plea pleaded or Demurrer joined therein, shall likewise recover his Costs of Suit: And if the Plaintiff become nonsuit, or discontinue, or a Verdict pass against him, the Defendant shall have Costs and Execution for the same.

In all Actions of Trespafs commenced after the said 25th of *March*, in any Court of Record at *Westminster*, where it shall appear at the Trial and be certified by the Judge on the Back of the Record, that the Trespafs was wilful and malicious, the Plaintiff shall recover not only his Damages, but his full Costs of Suit.

Provided nothing herein contained shall alter the Laws in being as to Executors and Administrators, in such Cases where they are not at present liable to pay Costs of Suit.

In all Actions commenced in any Court of Record after the said 25th of *March*, if the Plaintiff dye after an interlocutory Judgment, and before a final Judgment, the said Action shall not abate, if the said Action might be originally prosecuted by his Executors or Administrators; and if the Defen-

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dant dye after such interlocutory Judgment, and before final Judgment, the Action shall not abate, if such Action might be originally prosecuted against his Executors or Administrators; and the Executors or Administrators of such Plaintiff, after such interlocutory Judgment, may have a *Scire Facias* against the Defendant if living, or if dead, against his Executors or Administrators, to shew Cause why Damages should not be assessed and recovered against him or them: And if he or they do not appear at the Return, and shew sufficient Cause to arrest the final Judgment, or being returned, warned, or upon two Writs of *Scire Facias* it being returned, that the Defendant had nothing whereby to be summoned, or could not be found, a Writ of Enquiry of Damages shall be awarded; which being executed and returned, Judgment final shall be given for the said Plaintiff, his Executors or Administrators.

If there be two or more Plaintiffs or Defendants, and one die, if the Cause of Action survive to the surviving Plaintiff, or against the surviving Defendant, the Writ or Action shall not abate, but such Death being suggested upon

upon the Record, the Action shall proceed.

In all Actions after the said twenty-fifth Day of *March*, prosecuted in any of the King's Courts of Record, upon any Bond or penal Sum for Non-performance of Covenants, the Plaintiff may assign as many Breaches as he shall think fit, and the Jury at the Trial shall and may assess Damages for such of the said Breaches so assigned, as the Plaintiff at the Trial shall prove broken; and the like Judgment shall be entered on such Verdict as hath been usually done in such Actions. And if Judgment be given for the Plaintiff, upon Demurrer, Confession, or *Nibil Dicit*, the Plaintiff upon the Roll may suggest as many Breaches as he shall think fit, upon which shall issue a Writ to summon a Jury to appear at the Assizes of that respective County, to enquire of the Truth of every one of those Breaches, and to assess Damages accordingly; and the Justices of Assize shall make a Return thereof to the Court from whence the same issued. In Case the Defendant, after such Judgment entered, and before Execution executed, shall pay into Court such Damages so assessed, and Costs of Suit, a Stay of Execution shall be entered upon Record: Or if

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by reason of Execution executed, the Plaintiff, or his Executors, or Administrators, shall be fully paid all such Damages, together with his Costs and reasonable Charges, the Body, Lands and Goods of the Defendant shall be forthwith discharged, and the Satisfaction entered upon Record : Yet shall such Judgment stand, and be as a further Security to answer to the Plaintiff, his Executors, &c. such Damages as shall or may be sustained for further Breach of any Covenant, in the same Deed or Writing contained, upon which the Plaintiff, &c. may have a *Scire Facias* upon the said Judgment against the Defendant, his Heir, Terre-Tenants, Executors, or Administrators, suggesting other Breaches, and to summon them to shew Cause why Execution shall not be awarded upon the said Judgment ; upon which there shall be the like Proceedings as aforesaid, and upon Payment of Damages and Costs, Proceedings to be again stayed, and so *toties quoties*, and the Defendant discharged out of Execution.

Forms

Forms of *W R I T S*.

A.

An Attachment of Priviledge for a Clerk of the King's Bench.

G Eorge the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, to the Sheriff of *Middlesex*, Greeting: We command you, that you attach *A. B.* and *C. D.* if they may be found in your Bailiwick, and keep them safely, so that you may have their Bodies before us at *Westminster*, on *Monday* next after three Weeks of Saint *Michael*, to answer to *M. H.* Gentleman, one of the Clerks of *Edward Ventriss*, Esquire, Chief Clerk of our Clerks, assigned to inroll Pleas in our Court before us, according to the Liberties and Priviledges for such Chief Clerk, and his Clerks, from the Time whereof the Memory of Man is not to the contrary, used and approved in the same Court, of a Plea of *Trespas*, and that you then have there this Writ. Witness, *Robert Lord Raymond*,
R 4

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*mond, at Westminster, the twenty-
eighth Day of June, in the sixth Year
of our Reign. Ventris.*

For an Attorney in the King's Bench.

To answer to *A. B.* Gentleman, being one of the Attornies in our Court before us, according to the Liberties and Priviledges for such Attornies from the Time whereof (*as in the former*).

For an Attorney in the Common Pleas.

George the Second, (*as before*) to the Sheriff of *Middlesex*, Greeting: We command you, that you attach *C. D.* and *E. F.* if they may be found in your Bailiwick, and keep them safely, so that you may have their Bodies before us at *Westminster*, on *Monday* next after three Weeks of *Saint Michael*, to answer to *A. B.* Gentleman, one of the Attornies of our Court of the Bench, according to the Liberty and Priviledge of the same Court for such Attornies, and other Ministers of the same Bench, from the Time wherein the Memory of Man doth not exist, used and approved in the same, of a Plea of Trespass, and have you there this Writ. Witness, *Sir Robert Eyre*, Knight, at
Westminster,

Westminster, the twenty-eighth Day of *June*, in the sixth Year of our Reign.

Observe the abovementioned Writs, or at least the Copies served must have the Clause in the late Act, *You are served with this Process*, — and so on; but if you would hold the Defendant to Bail, an Affidavit must be made of the Debt, and an *And also* added in the Writ, (for which see Volume the First.) Observe likewise, that no Attorney is to commence an Action for Fees until one Month after the Delivery of his Bill, written in a common legible Hand, and in the *English* Tongue, (except Law-Terms and Names of Writs) and in Words at length, (except Times and Sums) which Bill must be subscribed with the proper Hand of the Attorney. See Volume the First, Page 35.

The

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B.

*The Entry of a Bill of Middlesex.**The Writ or
Precept.*

Middlesex, to wit, the Sheriff was commanded to take *T. H.* and *J. D.* if they be found in his Bailiwick, and that he keep them safely, so that he might have their Bodies before our Lord the King at *Westminster*, on *Monday* next after three Weeks of Saint *Michael*, to answer to *R. B.* in a Plea of Trespass, and that the same Sheriff might then have there that Precept. At which Day, before our Lord the King at *Westminster*, came the aforefaid *R.* in his proper Person, and offered himself against the aforefaid *T.* in the Plea aforefaid, and the Sheriff of *Middlesex*, to wit, *S. R.* Esquire, and *T. P.* Esquire, returned, That the aforefaid *T.* was not found in his Bailiwick:

*The Return.**Alias Awarded.*

Therefore the same Sheriff is commanded, as formerly he was commanded, that he take the aforefaid *T.* if he be found in his Bailiwick, so that he may have his Body before our said Lord the King at *Westminster*, on *Tuesday* next after fifteen Days of Saint *Martin*, to answer to the aforefaid *R.* of the Plea aforefaid. The same Day was there given to the aforefaid *Robert*.

Note, *The Two Sheriffs of London*, are accounted in *Middlesex* as one Sheriff.

Capias

C.

Capias ad Satisfaciendum. See before,
Page 128, &c.

*A Capias ad Satisfaciendum in Debt,
upon a Judgment renewed by Scire
Facias.*

GGeorge the Second — (and so on as
before, Page 128, to the Words)
whereof he is convicted, as appears to us
upon Record, and whereof it is considered
in our same Court before us, that the
aforesaid *A. B.* ought to have his Exe-
cution against the same *O. B.* for the
Debt and Damages aforesaid, by the
Default of him the said *O. B.* and
that you then have there this Writ.
Witness, *Robert Lord Raymond*, at
Westminster, the twenty third Day of
October, in the sixth Year of our Reign.
Ventris.

*A Capias ad Satisfaciendum in Detinue,
to restore a Bond, or the Value
thereof.*

George the Second, — (as before) —
Greeting: We command you, that you
take *C. D.* late of *Witham*, in the
County

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County of *Essex* aforesaid, Yeoman, if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before us at *Westminster*, on *Tuesday* next after fifteen Days of Saint *Martin*, to render to *A. B.* Esquire, a certain Writing Obligatory, wherein was contained, That one *E. F.* was held and obligated to him the said *A. B.* in five hundred Pounds (and to be paid unto the said *A. B.* at a certain Time in the said Writing contained) which the aforesaid *A. B.* hath in our Court before us recovered against him, or the aforesaid Sum of five hundred Pounds for the Value of the same Writing, which was adjudged to him in our same Court before us, if the same *A. B.* could not have a Delivery thereof; and also to satisfy to the same *A. B.* of fifteen Pounds, for his Damages which he hath occasioned by the Detention of the Writing aforesaid, and for that he could not have a Delivery thereof; whereof he is convicted, as appears to us upon Record, and that you then have there this Writ. Witness, —
as before to the End.

A Capias

*A Capias ad Satisfaciendum in Account,
to account with the Plaintiff as his
Bailiff.*

George the Second, — (*as before,*
to the End of the Return) — to ac-
compt with *W. M.* for the Time where-
in he was Bailiff of him the said *W. M.*
of eighty and two Pieces of Broad
Cloth, each Piece thereof containing
thirty and three Yards, whereof he is
convicted, as appears to us upon Re-
cord, and that you then have there this
Writ. Witness, — *as before.*

*A Capias ad Satisfaciendum in Case
against the Bail.*

George the Second, — (*as before*) —
Greeting: We command you, that you
take *C. H.* — of —, and *J. M.* of the
same, Yeoman, the Bail of *J. B.*
Esquire, if they may be found in your
Bailiwick, and safely keep them, so
that you may have their Bodies before
us at *Westminster*, on *Thursday* next
after eight Days of Saint *Hillary*, to
satisfy to *R. F.* of sixty and four
Pounds, for his Damages which he hath
sustained, as well by the Occasion of
the not performing certain Promises
and

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and Assumptions to him the said *R. F.* lately made by the aforesaid *J. B.* as also for his Costs and Charges by him expended about his Suit in that Behalf, whereof he the aforesaid *J. B.* is convicted, as appears to us upon Record, and whereof it is considered in our same Court before us, that the aforesaid *R. F.* ought to have his Execution against the aforesaid *C. H.* and *J. M.* for the Damages aforesaid, according to the Force, Form, and Effect of certain Recognizances, acknowledged by them the said *C. H.* and *J. M.* in our Court before us, for the same *J. B.* at the Suit of the aforesaid *R. F.* as it likewise appears unto us upon Record, and that you then have there this Writ. Witness, *R. R.* Knight, at *Westminster*, the twenty eighth Day of *November*, in the Second Year of our Reign.

Ventris.

Distingas.

D.

Distingas. See before, Page 79.*A Distingas against the late Sheriff.*

G Eorge the Second, — (*as before*) ---
 Greeting: We command you, that
 you distrain *J. B.* Esquire, late Sheriff of
 the County aforesaid, by all his Lands
 and Chattels in your Bailiwick, so that
 neither he, nor any for him, do inter-
 meddle therewith, until you shall have
 another Precept from us thereof; and
 that you do answer to us for the Issues
 of the same, so that he may have the
 Body of *J. W.* (by him taken, and in
 our Prison detained under his Custody,
 as he by his Return thereof sent into
 our Court before us hath heretofore
 charged himself) before us at *Westmin-*
ster, on *Wednesday* next after three
 Weeks of the *Holy Trinity*, to answer
 to *J. P.* Gentleman, of a Plea of Tres-
 pass; and also to a Bill of him the said
J. P. against the above-named *J. W.*
 for one hundred Pounds, upon an As-
 sumption, according to the Custom of
 our Court before us to be exhibited;
 and that you then have there this Writ.

Witnesses —

A Distingas

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A Distringas for a Trial at Bar.

George the Second, (*as before*) to the Sheriff of *Sussex*, Greeting: We command you, that you distrain *T. T. of Lewes*, Esquire, *J. M. of East-Gristead*, Baronet, — (*naming all the Jurors*) being the Jury summoned in our Court before us at *Westminster*, between *H. L.* Baronet, Plaintiff, and *O. P.* Esquire, Defendant, by all their Lands and Chattels in your Bailiwick, so that neither they, nor any for them, intermeddle therewith, until you shall have another Precept from us thereof; and that you do answer to us for the Issues of the same, so that you may have their Bodies before us at *Westminster*, on — next after — to make a certain Jury of the Country, between the Parties aforesaid, of a Plea of Trespass upon the Case, and to hear their Judgment thereupon, for their many Defaults; and that you then have there the Names of those Jurors, and this Writ. Witness —

A Distringas

*A Distringas on the Statute for a View
by Jurors.*

George the Second, — (*as before*)
to the Sheriff of *Kent*, Greeting: We
command you, that you distrain G. H.
of —, J. K. of —, (*and so recite
all the Jurors Names in the Pannel*)
being the Jury summoned into our
Court before us, between L. M. Plain-
tiff, and N. O. Defendant, by all their
Lands and Chattels in your Bailiwick;
so that neither they, nor any for them,
do intermeddle therewith, until you
shall have another Precept from us
thereof; and that you do answer to us
for the Issues of the same, so that you
may have their Bodies before us, at
Westminster, on *Monday* next after three
Weeks of Saint *Michael*, (*the first Day
of the following Term*) or before our
Justices assigned to take the Assizes in
your County, unless before *Monday*
the — Day of — (*the Day the As-
sises are to be held*) at *Maidstone*, in
your County aforesaid, by Form of the
Statute in such Case lately made and
provided, they come to make a certain
Jury of the Country, between the Par-
ties aforesaid, of a Plea of Trespass (*or
as the Action is*) and to hear their
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Judgment for their many Defaults; and in the mean Time, according to the Form of the Statute in such Case thereof lately made and provided, we command you, that you have Six out of the first Twelve of the Jury aforesaid, or any greater Number of them, at the Place in Question, on the — Day of — now next following, who shall then have a View of the same Place, in the Presence of *A. B.* on the Part of the Plaintiff, and *C. D.* on the Part of the Defendant, appointed by our Court before us, to show the aforesaid Place to the Jury aforesaid; and how you shall have executed this our Precept, testify to us at *Westminster*, at the Day aforesaid, by causing this our Writ to be returned, at the Day aforesaid, to our Justices at the Assizes aforesaid. Witness —

Elegit.

E.

Elegit. See before, Page 146.

An Elegit in Debt against Bail.

G Eorge the Second, -- (*as before*) --
 Greeting: Whereas *A. B.* lately
 in our Court before us at *Westminster*,
 by Bill without our Writ, and by the
 Judgment of the same Court, hath re-
 covered against *C. D.* of —, one of
 the Bail of *E. F.* one hundred Pounds
 Debt, and also five Pounds for his Da-
 mages which he hath sustained as well
 by occasion of detaining of that Debt,
 as also for his Costs and Charges by
 him expended about his Suit in that Be-
 half; whereof he the aforesaid *C. D.*
 is convicted, as appears to us upon Re-
 cord, according to the Form of a cer-
 tain Recognizance, by him the said
C. D. for the same *E. F.* to *A. B.* in
 our Court before us acknowledged;
 and because the aforesaid *A. B.* in our
 Court before us, hath elected to be
 delivered unto him all the Goods and
 Chattels of the aforesaid *C. D.* (ex-
 cept his Oxen and Beasts of the Plough)
 and likewise a Moiety of all — *as be-*
fore, Page 146 to the End.

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F.

Fieri Facias. See before, Page 137,
138, 139.

*A Fieri Facias in Debt against an Heir
for the Residue, Part being levied
by a former Fieri Facias.*

G Eorge the Second, -- (as before) --
Greeting: Whereas we lately
commanded our aforesaid Sheriff of the
County of *Suffex*, that of the Goods
and Chattels of *F. L.* the Heir of
G. L. his late Father deceased, otherwise
called *G. L.* of — in your Bailiwick,
to cause to be made as well one hundred
Pounds Debt, which *E. K.* late in our
Court before us at *Westminster*, hath re-
covered against him the said *F. L.* and al-
so fourteen Pounds and ten Shillings,
which was adjudged to the aforesaid *E.*
in our same Court before us at *Westmin-
ster* aforesaid, for his Damages which
he sustained, as well by occasion of the
Detention of that Debt, as for his Costs
and Charges by him expended about his
Suit in that Behalf; whereof the afore-
said *F.* was convicted, as appears to us
upon Record, and that he should have
that Money before us at *Westminster*
aforesaid, at a certain Day in the said
Writ

Writ nominated, to render unto the same *E.* for his Debt and Damages aforesaid: And our said Sheriff of *Sussex*, at that Day returned to us, That by Virtue of our Writ aforesaid to him thereof directed, he had made of the Goods and Chattels of the aforesaid *F.* one hundred and twelve Pounds and ten Shillings; and that he had paid twenty eight Pounds and fifteen Shillings Parcel thereof, according to the Act of Parliament in that Case lately made and provided, to one *J. P.* for half a Year's Rent, due to the same *J.* by the aforesaid *F.* and that he had paid eighty three Pounds and fifteen Shillings, the Residue of the aforesaid one hundred and twelve Pounds and ten Shillings, to the said *E.* in Part of Satisfaction for his Debt and Damages aforesaid: And that the aforesaid *F.* had no other or more Goods or Chattels in his Bailiwick, whereof he could make the Residue of the Debt and Damages aforesaid, according to the Exigence of the aforesaid Writ. And now, on the Behalf of the said *E.* it is sufficiently attested in our Court before us, that the aforesaid *F.* hath now sufficient Goods and Chattels in your Bailiwick, to satisfy to the same *E.* the Residue of the Debt and Damages aforesaid: There-

The Clerk's

fore we command you, that of the Goods and Chattels of the aforesaid *F.* in your Bailiwick, you cause to be made thirty Pounds and fifteen Shillings, the Residue of the aforesaid one hundred and fourteen Pounds and ten Shillings; and have you that Money before us at *Westminster*, on — next — to render unto the aforesaid *E.* for the Residue of his Debt and Damages aforesaid; and that you then have there this Writ. Witness —

H.

*A Habeas Corpus to do and receive,
returnable immediately before the
Lord Chief Justice.*

G Eorge the Second, -- (*as before*)--
To the Mayor, Aldermen and Sheriffs of *London*, and to every of them, Greeting: We command you, that you have the Body of *J. H.* detained in our Prison under your Custody, as it is said, under safe and secure Conduct, together with the Day and Cause of his taking and detaining, by whatsoever Name the said *J.* may be charged in the same, before our beloved and faithful *Robert Lord Raymond*, our Chief Justice, assigned to hold Pleas in
our

our Court before us, at his Chamber, situate in *Serjeants-Inn* in *Chancery-Lane*, *London*, immediately after the Receipt of this Writ, to do and receive all and singular those Things which our said Chief Justice shall then and there consider of him in this Particular; and that you then have there this Writ. Witness — (*as before*)

A Habeas Corpus before one of the Puisne Judges, returnable immediately.

George the Second, — (*exact as above to*) — may be charged in the same, before Sir *Edmund Probyn*, Knight, one of our Justices, assigned to hold Pleas in our Court before us, at his Chamber, situate in *Serjeants-Inn* in *Chancery-Lane*, *London*, immediately after the Receipt of this Writ, to do and receive — (*as before*)

If returnable in Court say,

— before us at *Westminster*, on *Monday* next after three Weeks of Saint *Michael*, to answer to *A. B.* of a Plea of Debt, and further to do and receive all and singular those Things which our Court before us shall then — (*as before.*)

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A Habeas Corpus to the Warden of the Fleet, to satisfy an Administrator for Damages recovered in the Court of Common Pleas.

George the Second, -- (as before) --
To the Warden of our Prison of the Fleet, or to his Deputy there, Greeting: We command you, that you have the Body of *J. W.* late of — in our Prison detained under your Custody, as it is said, under safe and secure Conduct, together with the Day and Cause of his taking and detaining, by whatsoever Name the same *J.* may be charged in the same, before our Justices at *Westminster*, on *Friday* next after — to satisfy *W. M.* Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of *N. J.* his late Brother, deceased, during the Minority of *E. J.* the natural and lawful Daughter and only Child of the aforesaid *N. J.* at the Time of his Death, who died intestate of one hundred and seventy Pounds, which hath been adjudged to the same *W.* in our same Court before our Justices at *Westminster*, for his Damages which he had by the Occasion of a certain Trespass upon the Case, lately done
and

and brought upon the same *W.* by the abovenamed *J.* whereof he is convicted; and further to do and receive all and singular those Things which our Court before our Justices shall then and there consider of him in this Particular; and that you then have there this Writ. Witness —

A Habeas Corpus to testify, and then to return to Prison.

George the Second, — (as before) — to the Warden of our Prison of the *Fleet*, or to his Deputy there, Greeting: We command you, that you have the Body of *W. L.* Gentleman, detained in our Prison under your Custody, as it is said, under safe and secure Conduct, before our beloved and faithful *Robert Lord Raymond*, our Chief Justice, assigned to hold Pleas in our Court before us, at *Guildhall, London*, on *Tuesday* the twenty third Day of this Instant Month of *February*, about the ninth Hour in the Morning of the same Day, to testify all and singular those Things which he shall know of his own Knowledge, in a certain Action now depending in our Court undetermined, between *M. L.* Widow, Plaintiff, and *G. B.* Esquire, Defendant, of

The Clerk's

of a Plea of Trespafs upon the Case, and to be tried between the Parties aforesaid in the Plea aforesaid, upon the abovenamed Day, by a Jury of the Country; and then immediately after the Evidence by the said *W.* before our abovenamed Justice in the Cause aforesaid then and there given, to return to the Prison aforesaid under safe and secure Conduct; and that you then have there this Writ. Witness ———

I.

Inquiries, *see before, Page 116.*
117. 118.

L.

Latitat, see before Page 69. Vol. I.

The Form of a Latitat in the County-Palatine of Chester.

GEORGE the Second, (*as before*)
To our Chamberlain of our County Palatine of *Chester*, or to his Deputy there, Greeting: Whereas we lately commanded our Sheriff of *Middlesex* —
(*as in the Latitat, Vol. I. Page 69.*)
— do

— do run up and down and secrete themselves in your County Palatine; Therefore we command you, that by our Writ under the Seal of our County Palatine aforesaid in a due manner made, and directed to the Sheriff of the County of *Chester*, you cause the same Sheriff to be commanded to take the aforesaid *C.D.* if he may be found in his Bailiwick, and keep him safely, so that he may have — (*as in the Latitat to the end.*) —

To the County Palatine of Lancaster.

— To our Chancellor of our County Palatine of *Lancaster*, or to his Deputy there, Greeting.

To the County Palatine of Durham.

— To the Reverend Father in Christ *Edward* by Divine Providence Bishop of *Durham*, or to his Deputy there, Greeting. — Therefore we command you, that by our Writ duly made under the Seal of your Bishoprick, to be directed to the Sheriff of the same Bishoprick of the County Palatine of *Durham*, you cause — (*as before.*)

If

The Clerk's

If to any of the *Cinque Ports*, or their Members, the Direction is thus:

— To the Constable of our Castle of *Dover*, or to his Deputy there, Greeting. Whereas — (*as in the Latitat.*) —

Note, The (*Cinque*) Five Ports are *Hastings*, *Romney*, *Hithe*, *Dover*, and *Sandwich*; and *Rye*, *Winchelsea*, and *Seaford*, are three antient Towns, and within the same Jurisdiction, being Members of the five Ports.

M.

A Mittimus to our Chancellor of Lancaster, to try an Issue, joined before our Lord the King.

GEORGE the Second, — To our Chancellor of our County Palatine of *Lancaster* greeting: Whereas a certain Complaint is in our Court before us at *Westminster* by our Writ between *E. H.* and others, who sue as well for us as for themselves; and *J. M.* of —, and others, of a Plea of Contempt

tempt and Trespass against the Form of the Statute of Entries made and provided, where no Entry is given by Law, wherein the Parties aforesaid have thereupon pleaded to Issue to be tried in our County of *Lancaster*, where our Writ does not run. We therefore send by these Presents the inclosed Mandate, That you cause to be tried the Issue in the Complaint between the Parties aforesaid joined in our same County of *Lancaster*, as of right and according to Law and Custom in the same County Palatine was used to be done; And when that Issue hath been tried or ended, then have you or cause to be had the Record aforesaid, with whatsoever hath been done thereupon before us wheresoever we shall then be in *England*, at a certain Day, with the Parties aforesaid by you prefixed; that these Things being seen, we may cause to be farther done, what of Right and according to the Law and Custom of our Kingdom of *England* ought to be done. Witness —

The

N.

The Form of a Non Omittas, Do not Omit.

GEORGE the Second, — To the Sheriff of *Sussex*, Greeting: We command you, that you do not omit by reason of any Liberty within your County; but that you enter the same, and take *C. D.* and *J. H.* if they may be found in your Bailiwick, and keep them safely, so that you may have their Bodies before us at *Westminster*, on *Monday* next after three Weeks of Saint *Michael*, to answer to *T. K.* of a Plea of Trespass, and also to a Bill of him the said *T.* against the above-named *C.* and *J.* for one hundred Pounds of Debt separately, according to the Custom of our Court before us to be exhibited; and that you then have there this Writ. Witness —

An

O.

An Original in an Appeal of Murder.

GEORGE the Second,—To the Sheriff of *Kent*, Greeting: Because *J. K.* Gentleman, the Cousin and Heir of *T. K.* Gentleman, hath made us secure of prosecuting his Clamour by *D. E.* late of *London*, Gentleman, and *R. L.* late of the same Place, Gentleman: Therefore we command you, that you attach *D. W.* late of *Maidstone* in your County, Labourer, otherwise called *D. W.* of ———, and *B. W.* late of ———, otherwise called *B. W.* of ———, by their Bodies, according to the Law and Custom of our Kingdom of *England*, so that you may have them before us from the Day of Saint *Martin* in fifteen Days, wherefoever we shall then be in *England*, to answer to the above-named *J. K.* concerning the Death of the aforesaid *T. K.* formerly his Cousin, whereof he hath appealed to us; and have you there this Writ. Witness ———

A

The Clerk's

P.

*A Procedendo to the City of London,
on a Habeas Corpus granted by the
Lord Chief Justice.*

GEORGE the Second, — To the Mayor, Aldermen, and Sheriffs of *London*, and to every of them, Greeting: Although we lately commanded you by our Writ, that you should have the Body of *T. S.* detained, as it was said, in our Prison, under your Custody, under safe and secure Conduct, together with the Day and Cause of his taking and detaining by whatsoever Name the same *T.* was charged in the same before our beloved and faithful *Robert Lord Raymond* our Chief Justice, assigned to hold Pleas in our Court before us at his Chamber situate in *Serjeants Inn* in *Chancery Lane, London*; immediately after the Receipt of that Writ, to do and receive all and singular those things, which our said Chief Justice should then and there consider concerning him in this Particular: Yet for certain Causes now in our Court before us specially moving us, we command you and every of you, that in whatsoever Pleas, original Bills,
or

or Complaints levied, or affirmed against him the said *T.* at the Suit of *D. M.* in our Court before you or any of you, and now depending undetermined before you or any of you; you proceed in such manner with what Haste you can, as you shall see is to be proceeded according to the Law and Custom of our Kingdom of *England*, and our City of *London*, our aforesaid Writ to you thereof formerly directed to the contrary in any wise notwithstanding. Witness —

A Procedendo upon a Writ of Latitat in London.

GEORGE the Second, — To the Sheriffs of *London*, Greeting : Whereas we had lately commanded our Sheriff of *Middlesex*, that he should take *S. S.* if he might be found in his Bailiwick, and keep him safely, so that he should have his Body before us at *Westminster*, at a certain Day now past to answer to *A. H.* of a Plea of Trespass. And our said Sheriff of *Middlesex* at that Day returned to us, that the aforesaid *S.* was not found in his Bailiwick; whereupon on the behalf of the said *A.* it was sufficiently attested in our Court before us, that the aforesaid *S.* did run

The Clerk's

up and down, and secret himself within our City of *London*; and we thereupon also lately commanded you, that you should take him if he might be found in your Bailiwick, and keep him safely, so that you might have his Body before us at *Westminster* on *Monday* next after three Weeks of *Saint Michael*, to answer to the aforesaid *A.* of the Plea aforesaid. And now in our same Court before us, we are informed on the behalf of *H. K.* that in a certain Plaint between him the said *H.* and the aforesaid *S.* in our Court before you depending undetermined, you have delayed, and yet do delay to proceed, by occasion of our said Writ, to the great damage of him the said *H.* And we being willing to do what is just for the same *H.* command you, that in whatsoever Plaints against him the said *S.* at the Suit of the aforesaid *H.* levied or affirmed before you or any of you, and before you or any of you now depending undetermined, you proceed with what celerity you can, in such a manner as you shall find is to be proceeded according to Law and the Custom of our City of *London*; our aforesaid Writ to you lately thereof directed in any wise notwithstanding. Witness—

Pro-

Procedendo *on a Certiorari.*

George the Second, — To the Mayor, Aldermen, and Sheriffs of *London*, and to every of them, Greeting. Although we lately commanded you by our Writ, that we being willing for certain Causes to be certified — (and so on, reciting the *Certiorari*, as the *Habeas Corpus* is before recited to) what we should see was of right to be done; yet for certain Causes now in our Court before us moving us, we command you and every of you, that as well in the Plaint aforesaid levied against the aforesaid *E. B.* in our Court before you or any of you at the Suit of the aforesaid *E. G.* as in the Attachment aforesaid thereupon made in the Hands and Custody of the aforesaid *A. T.* you do proceed with what Haste you can in such manner as you shall find is to be proceeded according to the Law and Custom of our said City of *London*, our aforesaid Writ to you thereof directed to the contrary in any wise notwithstanding. Witness —

The Clerk's

A Writ of Partition, to shew Cause why one of the Heirs refuses to divide the Land.

George the Second, — To the Sheriff of *Sussex*, Greeting: If *J. H.* and *A.* his Wife shall make you secure for prosecuting their Clamour, then summon by good Summoners *M. C.* late of *Hellingleigh* in your County, Widow, that she may be before our Justices at *Westminster*, from the Day of Saint *Michael* in three Weeks to shew wherefore (whereas the same *J.* (in the Right of her the said *A.*) and *M.* do together and undivided hold forty and six Acres of Land, with the Appurtenances of the Inheritance which was of *E. W.* Widow, the Mother of the said *A.* and *M.* whose Heirs they are in *Heffeld* and *Waldron*) the same *M.* refuses to make a Partition thereof between them, according to the Law and Custom of *England*, and unjustly (as they say) will not permit the same to be done; and have there the Summoners and this Writ. Witness ourself at *Westminster*, the sixteenth Day of *July*, in the fourth Year of our Reign.

Allen.

Par-

N.B. Partition may be made either as the above Writ, according to the Law and Custom of *England*, or according to the Statute in that Case made and provided; the Writ is made by the Curlier, for which you pay three Shillings and six Pence, and for the Sheriff's Warrant two Shillings and six Pence.

R.

A Writ of Restitution, where a Judgment is reversed by a Writ of Error directed to the Steward of the Court.

GEORGE the Second, — To the Steward of our Court of Record within the Borough of Saint *Alban's*, Greeting. Whereas, *E. H.* hath lately in our Court aforesaid before you without our Writ, by a certain Jury of the Country, and by Judgment of the same Court recovered against *C. R.* five Pounds of Debt, and also twenty Shillings for his Damages which he hath sustained, as well by the occasion of detaining of that Debt, as also for his Costs and Charges by him about

T 3

his

The Clerk's

his Suit in that Particular expended, whereof he was convicted, as by the Inspection of the Record, and the Proceedings thereof, which we have caused to come before us by reason of certain Errors to be corrected in the same, appears to us of Record; which said Record and Proceedings being seen, and by our Court before us diligently examined and fully understood, We by reason of divers Errors in the Record and those Proceedings in our Court before us being found, have reversed the Judgment aforesaid, and entirely disannulled the same; and have further considered, that the aforesaid C. R. be restored to all Things, which he by reason of the Judgment aforesaid lost: And also on the behalf of the aforesaid C. R. in our Court before us we are informed, That six Pounds of the same C. R. by reason of the Judgment aforesaid first rendered, was levied and delivered into your Hands, and that at this Time you have remaining in your Hands the said six Pounds; therefore we command you, that if it be so, that you then without delay cause Restitution of the said six Pounds to be made to the abovenamed C. R. and in what manner you shall have executed this our Precept, make known to us at

West-

Westminster, from the Day of Saint *Martin* in fifteen Days, wheresoever we shall then be in *England*, remitting this our Writ. Witness —

S.

A Scire Facias (after the Year and a Day) to revive a Judgment in Case.

GEORGE the Second, — To the Sheriff of *Southampton*, Greeting. Whereas *J. W.* hath lately in our Court before us at *Westminster*, by Bill without our Writ, and by Judgment of the same Court recovered against *L. R.* thirty seven Pounds, and ten Shillings, for his Damages which he hath sustained as well by the occasion of the not performing of certain Promises and Assumptions to the same *J.* by the aforesaid *L.* lately made, as for his Costs, and Charges by him about his Suit in this particular expended, whereof he is convicted as appears to us of Record, and now on the Behalf of the aforesaid *J.* in our Court before us we have heard, that although Judgment hath been thereupon given, nevertheless Execution of the Damages aforesaid as yet to him remains to be done. Where-

T 4

upon

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upon the same *J.* hath beseeched us to provide for him a proper Remedy in this particular; and we being willing what is just in this Particular, should be done, command you, that by honest and lawful Men of your Bailiwick, you cause the aforesaid *L.* to know that he be before us at *Westminster* on *Friday* next after one Month of *Saint Michael*, to show if he hath or knows any thing to say for himself, why the aforesaid *J.* ought not to have his Execution against him of the Damages aforesaid, according to the Force, Form, and Effect of the Recovery aforesaid, if it shall seem expedient for him; and further to do and receive what our Court before us of them shall then and there consider in this Particular, and that you then have there the Names of them by whom you have caused him to know, and this Writ. Witness —

The Entry of the Scire Facias on the Roll.

OUR Lord the King hath sent to the Sheriff of *Southampton* his closed Writ in these Words; to wit, *George the Second* — (*so on, reciting the first Scire Facias to the End, then add*)
— At

— At which Day before our Lord the King at *Westminster*, came the aforesaid *J. W.* in his own proper Person, and the Sheriff of *Southampton*, to wit, *R. L.* Esquire, at that Day returned, that the aforesaid *L. R.* had nothing in his Bailiwick, whereby he could cause him to know, nor was he found in the same, and the aforesaid *L. R.* came not; therefore, as heretofore it was, it is commanded to the said Sheriff of *Southampton*, that he should by honest and lawful Men of his Bailiwick make known to the aforesaid *L.* that he be before our said Lord the King at *Westminster* on *Saturday* next after the morrow of *All Souls*, — (*being the Return of the second Scire Facias*,) to shew in the Form aforesaid if he has or knows any thing to say for himself, why the aforesaid *J.* ought not to have his Execution against him of the Damages aforesaid, according to the Force, Form, and Effect of the Recovery aforesaid, if it shall seem expedient for him, and further to do and receive what our Court before us of him should have then and there considered. The same Day was there given to the aforesaid *J.* At which Day before our Lord the King at *Westminster*, came the aforesaid *J.* in his proper Person; and

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and the aforesaid Sheriff of *Southampton*, as before, returned, that the aforesaid *L.* had nothing in his Bailiwick, whereby he could make him to know, nor was he found in the same; [and the aforesaid *L.* at the same Day, being solemnly demanded, came not, but made Default; therefore it is considered, that the aforesaid *J.* may have his Execution against him of the Damages aforesaid, according to the Force, Form and Effect of the Recovery aforesaid.

A Scire Facias against Bail.

George the Second — (*as before to the Words*) — as yet to him remains to be done. And whereas *C. H.* of — and *J. M.* of the same, Yeoman, heretofore, to wit, in the Term of *Saint Michael*, in the first Year of our Reign, came personally in our same Court before us at *Westminster*, and became Pledges and Bail, and each of them by himself did become a Pledge and Bail for the aforesaid *J. B.* that if it should happen that the aforesaid *J. B.* should be convicted in the Plea aforesaid, then they the same Bail granted, and each of them for himself did grant, that all the Damages, Costs and Charges as should be adjudged, should be made of the proper Lands and Chattels of them, or either of them, and be levied for the Use and Benefit of

English Tutor.

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of him the said R. if it should happen the aforesaid J. B. did not pay to the aforesaid R. the Damages, Costs and Charges, or surrender himself to the Prison of the Marshal of our *Marshalsey* before us, by reason thereof; nevertheless, the aforesaid J. B. hath not as yet paid the aforesaid Damages, Costs and Charges to the aforesaid R. nor hath surrendered himself before us to the Marshal of our *Marshalsey*, according to the Form and Effect of the Recognizances aforesaid, as we have heard by the Relation of the aforesaid R. in our Court before us; whereupon the same R. hath beseeched us to provide for him a fit Remedy in this Particular, and we being willing that what is just should be done in this Particular, we command you, that by honest and lawful Men of your Bailiwick, you cause the aforesaid C. H. and J. M. to know that they may be before us at *Westminster*, on *Thursday* next after fifteen Days of the *Holy Trinity*, to show if they have or know any Thing to say for themselves why the aforesaid R. ought not to have his Execution against them of the aforesaid Damages, according to the Force, Form and Effect of the Recognizances aforesaid, if it shall seem expedient for them, and further

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ther to do and receive all and singular those Things which our same Court before us of them then and there shall have considered in this Particular ; and that you then have there the Names of them by whom you shall have made them to know, and this Writ. Wit-
nesses ———

A Scire Facias against Tertenants.

George the Second, ——— To the Sheriff of *Surrey*, Greeting: Whereas *C. C.* Widow, hath lately in our Court before us at *Westminster*, by Bill without our Writ, and by the Judgment of the same Court, recovered against *W. C.* otherwise called *W. C.* of ———, fifty Pounds of Debt, and also fifty and three Shillings for her Damages which she hath sustained, as well by Occasion of the detaining of that Debt, as for her Costs and Charges expended by her about her Suit in that Particular, whereof the same *W.* is convicted, as appears to us of Record. And now, on the behalf of the aforesaid *C.* we have been informed in our same Court before us, That although Judgment hath been thereof rendered, yet Execution of the aforesaid Debt and Damages as yet remains to be made to her, whereof the
same

same *C.* hath beseeched us for a fit Remedy to be provided for her in this Particular; and we being willing that what is just should be done therein, do command you, that by honest and lawful Men of your Bailiwick, you make known to the Tenants of all the Lands and Tenements which were of the aforesaid *W.* on *Friday* next after the Morrow of the *Holy Trinity*, in the second Year of our Reign, on which Day the Judgment aforesaid was rendered, or at any Time afterwards within your Bailiwick, that they may be before us at *Westminster*, on *Thursday* next after three Weeks of Saint *Michael*, to show if they have or know any Thing to say for themselves why the Debt and Damages aforesaid ought not to be levied on those Lands and Tenements, and rendered to the abovenamed *C.* according to the Force, Form and Effect of the Recovery aforesaid, if they shall think it expedient for them, and further to do and receive what our same Court before us shall then and there consider concerning them in this Particular; and that you then have there the Names of those by whom you shall have caused them to know, and this Writ. Wit-
nesses —

A Scire

A Scire Facias for an Executrix, who married after the Judgment obtained, in Debt.

George the Second, ——— To the Sheriff of *Sussex*, Greeting: Whereas *W. S.* Widow, Executrix of the last Will and Testament of *H. S.* her late Husband, deceased, hath lately in our Court before us at *Westminster*, by Bill without our Writ, and by Judgment of the same Court, recovered against *J. G.* otherwise called *J. G.* of ———, one hundred Pounds of Debt, and also fifty and three Shillings for her Damages which she hath sustained, as well by Occasion of the detaining of that Debt, as for her Costs and Charges expended by her about her Suit in that Particular, whereof he is convicted, as appears to us of Record. And afterwards, to wit, on the tenth Day of *May*, in the fifth Year of our Reign, at *Lewes* in the said County, the aforesaid *W.* married one *C. B.* Gentleman; and now, on the Behalf of the aforesaid *C.* and *W.* we have been informed in our Court before us, That although Judgment hath been thereof rendered, nevertheless, Execution yet remains to be made to them for the Debt and Damages aforesaid, whereof

whereof the same C. and W. hath beseeched us for a fit Remedy to be provided for them in this Particular; and we being willing that what is just should be done therein, do command you, that by good and lawful Men of your Bailiwick, you cause the abovenamed J. to know, that he be before us at *Westminster* on *Monday* next after three Weeks of Saint *Michael*, to show if he has or knows any thing to say for himself why the aforesaid C. and W. ought not to have their Execution against him for the Debt and Damages aforesaid, according to the Force, Form and Effect of the Recovery aforesaid, if he shall think it expedient for him; and further to do and receive what our same Court before us shall then and there consider concerning him in this Particular; and that you then have there the Names of those by whom you shall have caused him to know, and this Writ. Witness —

A Scire Facias against an Executrix, who married after the Judgment obtained in Case.

George the Second, — To the Sheriff of *Sussex*, Greeting: Whereas T. W. hath lately in our Court before us at *Westminster*, by Bill without our Writ,

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Writ, and by Judgment of the same Court, recovered against *M. H.* Widow, Executrix of the last Will and Testament of *R. H.* her late Husband, deceased, one hundred Pounds for his Damages which he hath sustained, as well by occasion of the not performing of a certain Promise and Assumption made by the aforesaid *R. H.* in his Life-time to the same *T. W.* as for his Costs and Charges by him in that Particular expended about his Suit, whereof he was convicted, as appears to us of Record: And now, on the Behalf of the aforesaid *T.* we have been informed, that the aforesaid *M.* afterwards took to Husband one *J. M.* Gentleman, and that the Marriage was solemnized and celebrated between them, and that Execution for the Damages aforesaid yet remains to be made unto the abovenamed *T.* whereupon, the same *T.* hath besought us for a fit Remedy to be provided for him in this Particular; and we being willing that what is just should be done therein, do command you, that by good and lawful Men of your Bailiwick, you make known to the abovenamed *J.* and *M.* his Wife, that they may be before us at *Westminster*, on *Tuesday* next after fifteen Days of *Saint Martin*, to shew

if they have or know any thing to say for themselves, why the aforesaid *T. J.* ought not to have his Execution of the Damages aforesaid against the aforesaid *J.* and *M.* his Wife, according to the Force, Form and Effect of the Recovery aforesaid (if it seem expedient for them) of the Goods and Chattels which were of the aforesaid *R.* at the Time of his Death in her Hands to be administered, if she has so much in her Hands; and further to do and receive what our same Court before us shall then and there consider concerning them in this Particular; and that you then have there the Names of those, by whom you shall have caused them to know, and this Writ. Witness ---

A Scire Facias against an Heir.

George the Second, ——— To the Sheriff of *Surrey*, Greeting: Whereas *N. T.* hath lately in our Court before us at *Westminster*, by Bill without our Writ, and by Judgment of the same Court recovered against *T. D.* otherwise lately called *T. D.* of — one hundred Pounds of Debt, and also fifty and three Shillings for his Damages which he hath sustained as well by occasion of the detaining of that Debt, as

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for his Costs and Charges expended by him about his Suit in that Particular, whereof he is convicted, as appears to us of Record. And afterwards the aforesaid *T. D.* on the first Day of *June*, in the fourth Year of our Reign, at *Croydon*, in the County of *Surrey* aforesaid, died; and one *J. D.* is the Son and next Heir of him the said *T.* and has divers Lands and Tenements by Hereditary Descent of the above-named *T.* his Father in Fee Simple: And now, on the Behalf of the aforesaid *N.* we have been informed in our same Court before us, that although Judgment hath been thereof rendered, yet Execution of the aforesaid Debt and Damages as yet remains to be made to him, whereof — (*as in the first Scire Facias, to the End, only inserting Debt and Damages instead of Damages.*)

A Scire Facias for an Executor after a Writ of Error in the Exchequer Chamber, where the Judgment was affirmed.

George the Second — To the Sheriff of *Middlesex*, Greeting: Whereas *J. G.* hath lately in our Court before us at *Westminster*, by Bill without our Writ, and by Judgment of the same Court

Court recovered against *P. T.* otherwise called *P. T.* of — two hundred Pounds of Debt, and fifty and three Shillings for his Damages which he hath sustained as well by Occasion of the detaining of that Debt, as for his Costs and Charges by him in that Particular expended about his Suit, whereof he is convicted, as appears to us of Record : And also, whereas the aforesaid *P. T.* did sue out of our Court of *Chancery* our certain Writ of Error of and upon the Judgment aforesaid, returnable before our Justices of the Bench, and the Barons of our *Exchequer*, of the Degree of the Coif, in our *Exchequer Chamber* at *Westminster* aforesaid. And afterwards, in our *Exchequer Chamber* at *Westminster* aforesaid, before our Justices of the Bench, and Barons of our *Exchequer*, of the Degree of the Coif, the Judgment aforesaid was in all Things affirmed, and seven Pounds in our said *Exchequer Chamber* by our Justices and Barons aforesaid, according to the Form of the Statute thereof made and provided, were adjudged to the same *J. G.* for his Damages, Costs and Charges which he had by Occasion of the Delay of the Execution of the Judgment aforesaid, by Pretence of the Prosecution of

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our said Writ of Error, as by the Inspection of the Transcript of the Judgment aforesaid, and the Proceedings thereon before our abovenamed Justices of the Bench and Barons of our *Exchequer*, had in our said *Exchequer Chamber*, having been sent again into our said Court before us at *Westminster*, and in our same Court remaining appears to us. And whereas the aforesaid *J. G.* at *Westminster*, in the County aforesaid, made his last Will and Testament in Writing, and constituted and appointed *S. J.* Executor of his last Will aforesaid, and afterwards there died: And now, on the behalf of the aforesaid *S. J.* Executor of the last Will of the aforesaid *J. G.* in our Court before us, we have been informed, that although Judgment hath been rendered and affirmed, nevertheless, Execution of the Judgment aforesaid as yet remains to be made; whereupon, the same *S. J.* hath besought us for a fit Remedy to be provided for him in this Particular, and we being willing that what is just should be done therein, do command you, that by good and lawful Men of your Bailiwick, you cause the abovenamed *P. T.* to know that he may be before us at *Westminster*, on *Friday* next after the Morrow of

of the *Holy Trinity*, to show if he has or knows any Thing to say for himself why the aforesaid *S. J.* ought not to have Execution against him of the Debt aforesaid, and also of the several Damages, Costs and Charges aforesaid, according to the Force, Form and Effect of the Judgment aforesaid, and further to do and receive what our Court before us shall then and there consider in this Particular; and that you then have there the Names of those by whom you shall have caused him to know, and this Writ. Witness —

A Scire Facias for an Executor to revive a Judgment in Case; where an Interlocutory Judgment had been signed in the Plaintiff the Testator's Life-time, pursuant to the Statute of the Eighth and Ninth of William the Third.

George — (as before) — Greeting: Whereas *R. K.* lately in our Court before us at *Westminster*, to wit, in the Term of Saint *Michael* last past, by Bill without our Writ, impleaded *H. D.* in the Custody of the Marshal of our *Marshalsey* before us, being for that, to wit, That whereas the aforesaid *H.* on the twenty-fourth Day of *September*,

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in the tenth Year of our Reign, at *Lewes*, in the County of *Sussex* aforesaid, was indebted to the same *R.* in one hundred twenty and four Pounds of lawful Money of *Great Britain*, as well for divers Works and Labours of him the said *R.* by him the said *R.* in and about divers Businesses of him the said *H.* and at the special Instance and Request of him the said *H.* before that Time done and performed ; as also for divers Materials, and Things necessary to be used in and about the same Businesses by him the said *R.* before that Time found and provided : And thereupon being so indebted, — (*and so on, to the End of the Declaration*). — And there was likewise Process in our same Court before us at *Westminster*, that the aforesaid *R.* ought to recover his Damages against the same *H.* occasioned by his the said *H.* not performing of his several Promises and Assumptions aforesaid, but because it was unknown to our Court before us what Damages the same *R.* had sustained by Occasion of the Premises aforesaid : Therefore we commanded you, that by the Oath of twelve good and lawful Men of your Bailiwick, you should diligently enquire what Damages the aforesaid *R.* had sustained, as well by the

the

the Occasion of his the said *H.* not performing his several Promises and Assumptions aforesaid, as also for his Costs and Charges by him about his Suit in this Particular expended; and the Inquisition which you should have made thereof, you should remit before us at *Westminster*, on *Wednesday* next after fifteen Days of *Easter*, under your Seal, and the Seal of those by whom you should have taken such Inquisition, together with that Writ, and the same Day was given to the aforesaid *R.* before us at *Westminster* aforesaid, as by the Record and Proceeding thereupon remaining in our Court before us at *Westminster* plainly appears. And whereas before the aforesaid *Wednesday* next after fifteen Days of *Easter*, the aforesaid *R.* at *Lewes* aforesaid, in the County aforesaid died, and that the Inquisition of the Damages aforesaid, as yet remains to be done; and one *R. K.* Son of the aforesaid *R.* deceased, is the Executor of the last Will and Testament of the said *R.* his late Father deceased, and hath took upon himself the Burthen and Execution of the same, as by the Information of the same *R. K.* Executor of the aforesaid *R.* deceased, we have heard; and because we are willing that those Things which are just should

The Clerk's

be done in our said Court before us, we command you, as formerly we have commanded you, that by good and lawful Men of your Bailiwick, you make known to the aforesaid *H.* that he may be before us at *Westminster*, on *Saturday* next after one Month of *Easter*, to shew if he has or knows any thing to say for himself why the Damages aforesaid ought not to be assessed in the Action aforesaid, and recovered by the aforesaid *R. K.* Executor of the aforesaid *R.* deceased, according to the Form and Effect of the Statute in such Case lately made and provided, if it should seem expedient for him, and further to do and receive what our same Court before us shall then and there consider in this Particular; and that you then have there the Names of those by whom you have made it known to him, and this Writ. Witness —

The

The Entry of a Scire Facias against the Bail, where they appeared and pleaded, to which Plaintiff replies, and afterwards one of the Bail died, whose Death being suggested on the Roll, (pursuant to the Act before-mentioned) Plaintiff prays Judgment against the Survivor.

OUR Lord the King hath sent to the Sheriff of *Middlesex* his closed Writ in these Words, to wit, *George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, to the Sheriff of Middlesex, Greeting: Whereas — (reciting the whole Writ to the End) — At which Day the aforesaid J. H. came in his proper Person before our Lord the King at Westminster; and the Sheriff of Middlesex aforesaid, to wit, B. G. Knight, and C. P. Knight, at that Day returned, That the aforesaid E. C. and J. A. had nothing in his Bailiwick, whereby he could make known to them, nor were they found in the same, and the aforesaid E. C. and J. A. did not come; therefore it is, as* *Alias Awarded* *formerly it was commanded the Sheriff of Middlesex aforesaid, that by good and lawful Men of his Bailiwick, he should*

The Clerk's

should make known to the aforesaid *E. C.* and *J. A.* that they may be before our said Lord the King at *Westminster*, on *Thursday* — (*the Return of the Second Scire Facias*) to show if they have or know any Thing to say for themselves why the aforesaid *J. H.* ought not to have his Execution against them of the Debt and Damages aforesaid, according to the Force, Form and Effect of the Recognizance aforesaid, if they shall think it fit, and further to do and receive all and singular those Things which our same Court before us shall then and there have considered concerning them in this Particular, the same Day is given to the abovenamed *J. H.* to be there; at which Day the aforesaid *J. H.* came in his proper Person before our Lord the King, at *Westminster*, and the aforesaid Sheriff of the said County of *Middlesex* returned as before, That the said *E. C.* and *J. A.* had nothing in his Bailiwick whereby he could make known to them, nor were they found in the same. And the aforesaid *E. C.* and *J. A.* at the same Day being solemnly demanded, likewise came by *R. G.* their Attorney; and thereupon the aforesaid *J. H.* as before, prays Execution against the abovenamed *E. C.* and *J. A.* of his Debt and Damages

images aforesaid to be adjudged to him. And the aforesaid *E. C.* and *J. A.* say, That the aforesaid *J. H.* ought not to have his Execution against them of the Debt and Damages aforesaid, by Pretext of the Recognizance aforesaid, because they say, that there is no such Record of the Recognizance aforesaid against them the said *E. C.* and *J. A.* at the Suit of the aforesaid *J. H.* as the aforesaid *J. H.* by the aforesaid Writ of *Scire Facias* above supposes, and this they are ready to aver; whereupon they pray Judgment, and that the aforesaid *J. H.* may be precluded from having his Execution against them the said *E. C.* and *J. A.* of the Debt and Damages aforesaid, by Pretext of the Recognizance aforesaid. *Plea, No such Record.*

And the aforesaid *J. H.* says, That he, for any Thing by the aforesaid *E. C.* and *J. A.* above in pleading alleged, ought not to be precluded from having his Execution aforesaid against them of the Debt and Damages aforesaid, by Pretext of the Recognizance aforesaid, because he says, that there is such a Record of the Recognizance aforesaid against them the said *E. C.* and *J. A.* at the Suit of the aforesaid *J. H.* as he the said *J. H.* by the aforesaid Writ of *Scire Facias* above supposes, *Replication.*

The Clerk's

supposes, and this he is ready to aver by the Record of the Recognizance aforesaid, as appears in the Court of our said Lord the King, before the King himself at *Westminster*, in the said Term of Saint *Hillary*, in the third Year of the Reign of our said Lord the now King, on the one hundred and fifty third Roll. And thereupon the aforesaid *J. H.* prays, that the Record of the Recognizance aforesaid may be seen and inspected by the Court here, and that Execution of his Debt and Damages aforesaid against them the said *E. C.* and *J. A.* may be adjudged to him. But because the Court of our said Lord the King now here, is not yet advised of giving their Judgment of and upon the Premises, a Day is given thereupon to the Parties aforesaid, before our Lord the King at *Westminster*, until *Saturday* next after three Weeks of Saint *Michael*, for hearing of their Judgment of and upon that Issue; at which Day, before our said Lord the King at *Westminster*, the said *J. H.* came in his proper Person, and says, that after the Time of the issuing of the aforesaid Writ of our said Lord the King of *Alias Scire Facias*, and after the Plea of him the said *J. H.* above in his Replication pleaded, to wit, on the first Day

Continuance.

Day of *October*, in the abovesaid fourth Year of the Reign of our said Lord the now King, the said *J. A.* at *Westminster*, in the County of *Middlesex* aforesaid, died, and the aforesaid *E.* One of the Bail died, the Plaintiff prays Judgment against the other. survived him. And the same *J. H.* as before, prays Judgment, and that the Record of the Recognizance may be here seen and inspected by the Court, and that Execution of his Debt and Damages aforesaid may be adjudged against the said *E. C.* But because the Court of our said Lord the King now here is not yet advised of giving Judgment thereupon, — *and so entering the Continuance as above, 'till Judgment is given by the Court.*

Note, Upon this you must give Notice to the Attorney for the Bail, when you will bring in the Record, and after the Record is brought in give a Rule for Judgment; stamp your Paper Book with a double Half Crown, and Mr. *Clark* will tax you Cost; and then Mr. *Tully* (if desired) will enter the final Judgment.

A Subpoena

A Subpœna ; See before, Page 81.

*A Superfedeas on a Habeas Corpus after
a Procedendo.*

George the Second, — To the Mayor, Aldermen, and Sheriffs of *London*, Greeting. Although we have lately commanded you by our Writ, that you should have the Body of *R. W.* in our Prison under your Custody detained, as it was said, under safe and secure Conduct, together with the Day and Cause of his taking and detaining by whatsoever Name the same *R.* should be charged in the same before us at *Westminster*, — (*on such a Return*), — to do and receive all and singular those Things which our Court before us should then and there consider concerning him in that particular : Yet for certain Causes then in our Court before us moving us, we then commanded you and every of you, that in whatsoever Actions, Complaints, or original Bills against him the said *R. W.* at the Suit of *J. B.* levied or affirmed in our Court before you or any of you, then depending undetermined, you should proceed with what Celerity you could, in such a manner as you should find was to be proceeded according to the Law and Custom of
our

our Court aforesaid; our aforesaid Writ to you before directed to the contrary thereof in any wise notwithstanding. But because the aforesaid *R. W.* hath appeared before us, and found sufficient Bail in our Court to answer to the abovenamed *J. B.* and to satisfy the same *J.* if it should happen that he the said *R.* should be condemned in any Action at the Suit of the abovenamed *J.* in our Court before you or any of you, in any Action, Plaint, or Original Bill against him the said *R.* at the Suit of him the said *J.* Therefore we command you, that you and every of you entirely surcease in any Action, Plaint, or Bill aforesaid against him the said *R.* at the Suit of the aforesaid *J. B.* notwithstanding our aforesaid Writ of *Procedendo* to you before directed to the contrary. Witness—

A Superseas on a Writ of Latitat, because the Defendant hath found Bail.

George the Second, — To the Sheriff of *Surrey*, Greeting. Whereas we lately commanded our Sheriff of *Middlesex*, that he should take *J. S.* if he might be found in his Bailiwick, and keep him safely, so that he should have his Body before us at *Westminster* at a certain Day now past, to answer to
A.

The Clerk's

A. L. of a Plea of Trespass; and our said Sheriff of *Middlesex* at that Day returned to us, that the aforesaid *J. S.* was not found in his Bailiwick; whereupon on the behalf of the said *A.* it was sufficiently attested in our Court before us, that the aforesaid *J. S.* does run up and down, and secret himself in your County; and thereupon by our Writ we lately commanded you, that you should take the said *J. S.* if he might be found in your Bailiwick, and safely keep him, so that you might have his Body before us at *Westminster* at a certain Day now past in the same Writ contained, to answer to the abovenamed *A. L.* of the Plea aforesaid. And because the same *J. S.* hath appeared in our Court before us, and hath found sufficient Bail to answer to the abovenamed *T.* and to satisfy the abovenamed *A.* if it should happen that he the said *J.* be condemned in any Action at the Suit of the said *A.* Therefore we command you, that from the taking, arresting, and imprisoning the aforesaid *J.* or in any manner from troubling him on that Occasion, you entirely surcease: And if you shall have taken him on that occasion, and no other, then do you without delay cause him to be delivered from that Prison, wherein he

is

is thus detained, on the Peril incumbent; and that you then have there this Writ. Witness —

A Superfedeas on a Writ of Latitat, because it hath issued improvidently, and unjustly.

George the Second, — To the Sheriffs of London, Greeting. Whereas (*as above, or in the Latitat to*) does run up and down, and secret himself, in our City of London, and thereupon by our Writ we lately commanded you, that you should take the said *J. S.* if he might be found in your Bailiwick, and keep him safely, so that you might have his Body before us at *Westminster* at a certain Day now past in the same Writ to you therein directed contained, to answer to the abovenamed *W.* of the Plea aforesaid: And because that Writ hath unjustly and improvidently issued out of our Court before us against the abovenamed *J.* Therefore we command you, that you entirely surcease from the taking, arresting, and imprisoning the aforesaid *J.* or in any manner from troubling him on that occasion: And if you shall have taken him on that occasion, and no other, then do you

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without delay cause him to be delivered from that Prison wherein he is thus detained, on the Peril incumbent ; and that you then have there this Writ. Witness —

A Superfedeas for one of the Chief Clerk's Clerk.

George the Second, — To the Mayor, Aldermen, and our Sheriffs of *London*, Greeting. Whereas as well from our Royal Dignity, as by antient Custom, pursuant to the same in Times past used and hitherto approved, it was obtained, that all and singular our chief Clerks assigned to inroll Pleas in our Court before us, and their Clerks for the time being ought not, nor during the whole Time aforesaid were accustomed to be drawn or compelled to answer before any secular Judges elsewhere than in our Court before us, upon any Pleas or Complaints (Pleas of Freehold only excepted): And now on the behalf of *R. H.* Gentleman, one of the Clerks of *Edward Ventriss* Esquire, our Chief Clerk for inrolling Pleas in our Court before us, we have been informed, that notwithstanding the Dignity and Custom aforesaid, some malicious Persons little esteeming

esteeming the Dignity and Custom aforesaid, have drawn into Plea the aforesaid *R. H.* in our Court before us, by Pretext of divers Complaints levied before you against the same *R.* in contempt of our Dignity, and to the manifest Hurt and Enervation of our Custom aforesaid, and to the no small Expence and Grievance of the same *R.* Which Thing if it is permitted to others, may turn to a pernicious Example: Therefore we command you, by firmly enjoining that you surcease, and every of you do entirely surcease, from any further Proceeding before you or any of you in the Complaint aforesaid, or in any other of the same, you telling the Parties prosecuting those Complaints before you in Form aforesaid, that they come to our Court before us to follow Justice there in that Particular, if to them it shall seem expedient. Witnesses ———

A Superfedeas for an Attorney of the Court of Common Pleas, prosecuted in the King's Bench.

George the Second, — To our Justices assigned to hold Pleas before us, Greeting. It is shewn to us on the behalf of *A. B.* Gentleman, one of the Attorneys of
X 2
our

The Clerk's

our Court of the Bench, that whereas he is a common Attorney of the Bench aforesaid, and prosecutes and defends in the same Bench divers Causes for many of our Subjects, as their Attorney. And the same *A.* and all other Attorneys in the Bench aforesaid, while they so prosecute or defend any Causes in the same Bench, ought to be under our Protection, and are within the Liberties and Privileges of our Court of the Bench aforesaid, from the Time of the contrary whereof is not used and approved in the Memory of Man: Nevertheless Sir *C. D.* Knight, not regarding the Liberties and Privileges of our Court of the Bench aforesaid, hath obtained and prosecuted before you a certain Bill of Trespasse done by the abovenamed *A.* to the same *C.* as it is asserted, in Contempt of our said Court of the Bench, and as we are informed, to the no small Damage and Grievance of him the said *A.* and of others our Subjects, whose Attorney the same *A.* is. And therefore we command you, that you be entirely superseded from proceeding against the abovenamed *A.* in all Pleas and Suits moved or to be moved in our Court before you (Pleas of Freehold, Felonies, and Appeals only excepted), you declaring on our behalf

English Tutor.

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behalf to the Parties in the Pleas and Suits aforesaid, that they may prosecute those Pleas and Suits in our Court before our Justices of the Bench aforesaid, if to them it shall seem expedient. Witness —

A Superedeas to a Capias ad Satisfaciendum, where the Plaintiff had acknowledged Satisfaction for the Debt and Damages.

George the Second, — To the Sheriffs of *London*, Greeting. Whereas we have lately commanded you by our Writ to take *A. B.* if he could be found in your Bailiwick, and keep him safely, so that you might have his Body before us at *Westminster* on *Monday* next after three Week of Saint *Michael*, to satisfy *C. D.* of one hundred Pounds of Debt, and also fifty three Shillings for his Damages which he hath sustained, as well by the occasion of detaining of that Debt, as for his Costs and Charges in that Particular expended by him about his Suit, whereof he is convicted, as appears to us of Record: And because the same *C. D.* hath come into our Court before us, and hath acknowledged that he was satisfied for the

X 3

Debt

The Clerk's

Debt and Damages aforesaid; therefore we command you, that you entirely surcease from the taking, arresting, and imprisoning the aforesaid *A. B.* or in any manner from troubling him on that occasion: And if he is detained on that occasion and no other, do you without delay cause him to be delivered, on the Peril incumbent. Witness —

*A Writ of Summons in Waste against a
Tennant for Years, on the Statute
of Gloucester.*

George the Second, — To the Sheriff of *Somersetshire*, Greeting. If *D. W.* Gentleman, shall make you secure for prosecuting his Clamour, then do you summon by good Summoners *H. T.* Esquire, that he may be before our Justices at *Westminster*, from the Day of Saint *Martin* in Fifteen Days to shew why, whereas of the Common-Council of *England* it was provided, that it is not lawful for any one to make Waste, Sale, or Destruction of Lands, Houses, Woods, or Gardens demised to him for a Term of Life or Years, nevertheless the same *H.* in certain Woods in *W.* — which he holds for a Term of Years of the abovenamed *D.* hath made Waste, Sale, and

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The Return thereof,

The within-named } *John Rous,*
H. T. was sum- } and
moned by } *Thomas Varham,*

Let no Effoin be received.

Thomas Clendon.

This Writ properly lyes where either *Where the Writ*
 Tenant for Years, Tenant for his own *of Waste lies.*
 or another's Life, Tenant in Dower,
 or Tenant by the Courtesy, do commit
 Waste by pulling down of Houses, or
 suffering them to fall for want of Re-
 pairs, or in cutting down of Timber, of
 digging

The Clerk's

*The Writ given
by Statute of
Gloucester,
6. Ed. I. C. 5.
and 6.*

digging of Ground, and the like; then he in Reversion shall have this Writ, and by the Statute abovementioned shall recover the Place wasted, and treble Damages.

This Writ is made out by the Curfitor.

If the Tenant does not appear, you get it returned by the Sheriff; and if he does not cast an Essoin, (that is, shew Cause why he does not appear,) you may enter a *Ne recipiatur* with the Clerk of the Essoins, as by the Return and Entry thereof above appears; and after this you have a *Pone*, (which is a Writ commanding the Sheriff to take Surety for the Defendant's Appearance at the Day assigned,) which you prosecute in like manner; and then the Tenant may Essoin: but if he does not, you may have a *Distringas*, that is, a Writ commanding the Sheriff to distrain for the Defendant's Appearance.

Testatur

T.

Testatum Capias ad Satisfaciendum,
See before, Page 131, 132.

Testatum Fieri Facias, See also before, Page 141, 142.

V.

A Venire Facias, where one Party is a Foreigner.

GEORGE the Second, — (*as before in the Venire, Page 78. to*) twelve free and lawful Men of the Body of your County: Let one Moiety whereof be Natives, and the other Moiety thereof Aliens, born in Parts beyond the Seas, to wit, under the Obedience of *Lewis King of France*, each of whom hath ten Pounds of Lands, — (*as in a common Venire to the End*).

A

*A Venire Facias in an Action of Slander,
for a Peer of the Realm.*

George the Second, — To the Sheriff of *Essex*, Greeting. We command you, that you cause to come before us at *Westminster*, on *Wednesday* next after three Weeks of the *Holy Trinity*, as well twelve Knights as twelve other free and lawful Men of the Body of your County; let each of whom have at the least ten Pounds by the Year of Lands, Tenements, or Hereditaments, by whom the Truth of the Matter may be the better known; and who are neither of kin to *G. Earl of H.* one of the Peers and Nobles of this Kingdom, who sues as well for us as for himself the Plaintiff, nor to *A. L.* to make a certain Jury of the Country, between the Parties aforesaid, concerning a Plea of Trespass and Contempt against the Form of the Statute of the Scandal of Noblemen, lately made and provided; because as well the same *M.* as the aforesaid *G. Earl of H.* (who sues as well for us as for himself), between whom the Contention thereof is, have put themselves upon that Jury: And have

have you there then the Names of that Jury and this Writ. Witness —

A Venire Facias in an Appeal of Robbery.

George the Second, — (*as in a common Venire to*), and who are neither of kin to *R. W.* the Appellant, nor to *W. A.* late of — to recognize upon their Oath whether or no the said *W. A.* be guilty of the Robbery of him the said *R. W.* and of breaking our Peace, whereof the same *R. W.* hath accused him the said *W. A.* in our Court before us; because as well the same *W. A.* as the aforesaid *R. W.* between whom the Contention thereof is, have put themselves upon that Jury: And have you there then the Names of that Jury, and this Writ. Witness —

The

The Clerk's

*The Form of a Satisfaction Piece,
with the Manner of acknowledging
Satisfaction on Record.*

SURREY, to wit: Satisfaction acknowledged by *T. 7.* upon a Judgment obtained by him the said *T. 7.* against *W. W.* for three hundred Pounds Debt, and sixty three Shillings Cost.

M. H.
Attorney.

The Judgment is entered in *Michaelmas* Term in the eleventh Year of the late King *GEORGE.* Roll 324.

Note, This Satisfaction Piece must be left by an Attorney upon Record, with Mr. *Hawley* the Signer of the Writs, to whom you pay three Shillings, and he delivers the same over on the Continuance-Day to the Clerk of the Doggets, who enters the same on the Roll, as follows.

Afterwards, to wit, on — next after — in — Term, in the — Year of the Reign of our Lord the now King, before our said Lord the King at *Westminster*, came the aforesaid *T. 7.* by *M. H.* his Attorney, to this purpose
espe-

especially appointed, and acknowledged himself to be satisfied by the aforesaid *W. W.* of the Debt and Damages aforesaid: Therefore the aforesaid *W. W.* is quit of those Debt and Damages.

The Form of Inrolling Deeds in the Court of *King's Bench.*

The Entry of a Deed acknowledged at Bar or in Court.

As yet of the Term, &c. Page 95:

E N G L A N D, to wit: Be it remembered, that on the three and twentieth Day of *October*, in that same Term, before our Lord the King at *Westminster*, came *A. K.* in his own proper Person; and he brought here into the Court of our Lord the King then there his certain Writing indented, which he acknowledged to be his Deed, and prayed, that That Writing might be inrolled of Record before our said Lord the King, as his Deed; and it is inrolled in these Words, to wit, This Indenture made, (*and so on to the End of the Deed.*)

The

The Clerk's

*The Entry of a Deed acknowledged
before the Lord Chief Justice.*

England, to wit: Be it remembered, that on the four and twentieth Day of *October*, in that same Term before our Lord the King at *Westminster*, *Robert Lord Raymond* the Chief Justice of our Lord the King, assigned to hold Pleas before the King himself here, records, that on the first Day of *July*, in the third Year of the Reign of our said Lord the now King, before the Chief Justice himself, at — in the County of —, came *A. L.* in his own proper Person: And he brought before the same Chief Justice then there a certain Writing indented, which he acknowledged to be his Deed; and prayed, that That Writing might be inrolled of Record before our Lord the King, as his Deed; which said Deed the aforesaid Chief Justice with his own proper Hands hath now delivered here into Court, in Form aforesaid to be inrolled; and it is inrolled in this Form as follows; to wit: *This Indenture made —*

The

The Inrollment of an Indenture acknowledged before one of the Justices, where two Persons had acknowledged the same in different Places.

England, to wit: Be it remembered, that on *Wednesday* next after fifteen Days of Saint *Michael* in that same Term before our Lord the King at *Westminster*, Sir *Edmund Probyn* Knight, one of the Justices of our Lord the King, assigned to hold Pleas in the Court of our said Lord the King, before the King himself, here records, that on the twenty ninth Day of *June*, in the third Year of the Reign of our said Lord the now King, at his Chamber in the City of *London*, before the same Justice came *W. T.* Esquire, the Son and Heir-Apparent of *F. T.* Esquire; and that on the twenty seventh Day of *July*, in the abovesaid third Year of the Reign of our said Lord the now King, at the City of *Lincoln*, before the same Justice came *F. T.* of ——— in the County of ——— Esquire, in their own proper Persons; and they then brought before the same Justice there, their certain Indenture, which they acknowledged to be their Deed; and they prayed, that That Indenture might

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might be inrolled of Record, before our said Lord the King, as their Deed ; which said Indenture the said Justice, with his own proper Hands, hath delivered here into Court, in Form aforesaid, to be inrolled ; and it is inrolled in this Form as follows, to wit, This Indenture made ~~_____~~ *and so on, as before, to the End.*

ORDERS for taking Bail before Commissioners in the Court of King's Bench.

Note, It is enacted, Stat. 4 *William and Mary*, That Bail may be taken in the Country before a special Commissioner for that Purpose authorized by the Judges of the *King's Bench, Common Pleas*, and Barons of the *Exchequer* respectively.

In the taking and filing whereof it is to be observed, That (in the *King's Bench*) there are Orders put forth by the Judges for that Purpose, to the Effect following.

FIRST, it is ordered, That the Bail-Piece shall be fairly drawn and ingrossed on Parchment in the Form following, *viz.*

Essex,

English Tutor.

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Essex, to wit, *John Doe* of *Chelmsford*, in the County aforesaid, Gentleman, is delivered to Bail, upon his Body being taken unto

John Denn of *Harwich*, in the County aforesaid, Smith,
And

Richard Fenn of *Haseley*, in the County aforesaid, Gentleman.

A. B. Attorney
for the De-
fendant.

At the Suit of
Richard Roe.

Taken and acknowledged
the — Day of —
before *A. B.* Commis-
sioner.

And in taking of the Recognizance,
these like Words must be used, to wit,

You (*calling the Bail by their Names*) do jointly and severally undertake, that if the Defendant (*naming his Name*) shall be condemned in this Action, at the Suit of the Plaintiff, (*naming his Name*) he shall satisfy the Costs and Condemnation, or render himself into the Custody of the Marshal of the *Marshalsey* of the Court of *King's Bench*, or you will pay the Costs and Condemnation for him.

VOL. II.

Y

And

The Clerk's

And if any Bail be given upon any Action or Actions removed out of any inferior Court, by Writ of *Habeas Corpus*, and returnable in the Court of *King's Bench*, then, instead of writing (*super Cepi Corpus*) upon his Body being taken, as before, you must write, (*super Brev. de Habeas Corpus*), Upon the Writ of *Habeas Corpus*; and instead of writing the Plaintiff's Name, as aforesaid, you must write, (*ad Sectam Querentis in Querela*), At the Suit of the Plaintiff in the *Plaint*, and the Cognizors must undertake, that if the Defendant be condemned at the Suit of the Plaintiff or Plaintiffs in the *Plaint*, that he shall satisfy the Costs and Condemnation, or render his Body, &c. as aforesaid.

SECONDLY, It is ordered, That the Affidavit for the due taking of every such Bail shall be made either before some Judge of the *King's Bench*, to whom the Bail shall be transmitted, or before some Person who shall have Power to take Affidavits in Matters and Causes depending in the said Court.

THIRDLY, It is ordered, That all Bails taken by any Commissioner within the Distance of forty Miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of

of the Court of *King's Bench*, or to one of the Justices of the same Court, within eight Days after the taking thereof. And all Bails taken by any Commissioner above the Distance of forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted within fifteen Days after the taking thereof, unless all the said Justices shall be in their Circuits, and then, as soon as any one of them shall be returned to his Chamber in one of the Serjeants Inn.

FOURTHLY also, every Commissioner is to have a Book kept purposely for entering the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail-Piece, and the Time of the taking thereof, and of the Name of him by whom such Bail shall be transmitted, and also the Name of the Attorney for the Defendant. And,

FIFTHLY, it is further ordered, That the Plaintiff's Attorney shall be at Liberty to repair to the Commissioner's Book for the Names of the Bail, to the End that they may enquire of the Sufficiency of them; and if they are found insufficient, they may except against them within twenty Days after the said Bail is transmitted, and Notice to the Plaintiff or his Attorney of the

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taking thereof: And in that Case, the Defendant must either put in better Bail, or the Cognizors of such Bails must justify themselves in open Court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court.

G. Eyre.

W. Dolben.

J. Holt.

Observe, That the Bail taken before Commissioners must be remitted to *London*, and affiled with one of the Judges of the Court within 8 or 15 Days, with an Affidavit of the due acknowledging thereof, which Affidavit may be made before the same Commissioner, or the Judge, with whom the Bail-Piece is filed, and may be as follows.

Between } *A. B.* Plaintiff,
 } and
 } *C. D.* Defendant.

In the King's Bench.

*An Affidavit
of taking Bail
before a Com-
missioner.*

E. F. of — maketh Oath, That the Recognizance of Bail, in the Bail-Piece hereunto annexed, was duly acknowledged by *G. H.* and *J. K.* before *L. M.* the Commissioner, who took

took the same in his (this Deponent's) Presence, on the first Day of *June* last past. Sworn, and so forth.

RULES to be observed in his Majesty's Court of King's Bench, in Proceedings upon Declarations delivered to Prisoners in Goal. It is ordered as followeth.

FIRST, That no Copy of a Declaration be delivered to a Prisoner in Custody before the Day of the Return of the Process, upon which the Defendant was taken or charged in Custody.

S E C O N D L Y, That no Rule be given for the Defendant in Custody to appear and plead to any Declaration against him, 'till an Affidavit be filed with the Clerk of the Rules of the Delivery of a Copy of such Declaration, and the Time when, and the Person to whom the said Copy was delivered, and that the Defendant was arrested or charged in Custody by Process in this Court, returnable before the Delivery of such Copy; and that the Time when such Affidavit was filed be entered upon the said Affidavit by the Clerk of the Rules, and a Copy of such Affidavit be produced to the Prothonotary or Secondary before signing of Judgment.

Y 3

T H I R D L Y,

The Clerk's

THIRDLY, If a Copy of a Declaration be delivered against such Defendants before *Mensem Pasche*, or *Craftinum Animarum*, and Affidavit thereof made and filed, and the Defendant doth not appear before the End of ten Days after *Easter* and *Michaelmas* Term respectively, Judgment may be entered against him, if Rules have been given; but if he doth appear before the End of ten Days after the Term, he shall imparle until the next Term (unless the Action be in *London* or *Middlesex*, and the Defendant be in Prison within forty Miles of *London* or *Westminster*) then, though he doth appear before the Expiration of ten Days after the End of the Term, he shall plead two Days before the Essoin Day of the next Term, and in Default thereof, (Rules having been given) Judgment may be entered against him, as aforesaid.

FOURTHLY, if a Copy of the Declaration be delivered against such Defendant on or after *Mensem Pasche*, in *Easter* Term, or *Craftinum Animarum* in *Michaelmas* Term, or in *Hillary* or *Trinity* Term, and thereupon the Plaintiff gives Rule to appear and answer, then must the Defendant appear two Days before the Essoin Day of the next Term; but if he doth not appear within that Time,

Time, Judgment shall be given against him.

FIFTHLY, If a Writ be returnable in any Term, and a Copy of the Declaration hath been delivered before the Effoin Day of the next Term, the Plaintiff, in such next Term, may give Rules to appear and answer, and if the Defendant doth not appear and plead upon the Expiration of the Rules, Judgment shall be given against him.

SIXTHLY, If the Declaration be not filed before the End of next Term after the Writ or Process (by which the Prisoner was taken or charged in Custody) is returnable, and Affidavit made and filed in Manner as aforesaid, before the End of twenty Days next after such Term, the Prisoner shall be discharged by common Bail, signed by one of the Justices of this Court.

SEVENTHLY, If any Goaler or Keeper of a Prison having received a Copy of the Declaration against any Person in his Custody shall suppress the same, and not deliver it forthwith unto such Prisoner, an Attachment shall be issued against him.

John Holt.

Wm. Dolben.

Wm. Gregory.

Giles Eyre.

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Further RULES to be observed in the delivering of Declarations to Prisoners.

Declarations are usually delivered by the Plaintiff's Attorney to the Defendant; but formerly, when the Defendant was committed to Goal for want of Bail, unless the Plaintiff, before the End of two Terms next after the Arrest, did cause the Defendant to be removed by *Habeas Corpus*, to be discharged in Court, the Prisoner, upon common Bail, or Appearance of Attorney, was discharged from Imprisonment, to Plaintiff's Prejudice.

Therefore, by Statute, 4th and 5th *William and Mary*, Chapter 21, it is enacted, That where the Defendant is taken or charged in Custody upon any Writ out of any of the Courts at *Westminster*, and imprisoned for want of Sureties for Appearance, the Plaintiff, before the End of the next Term after the Writ is returnable, may declare against the Prisoner in the Court, and may cause a Copy thereof to be delivered to the Prisoner, or to the Goaler or Keeper, to which Declaration the Prisoner shall appear and plead, or otherwise the Plaintiff shall have Judgment

A RULE made in the Court of King's Bench in Trinity Term, in the Second Year of the late King George, relating to the Superseding of Actions.

IT is Ordered, That if any Defendant shall be committed to the Custody of the Marshal of this Court, or shall be charged in Custody of the said Marshal, or shall be arrested and committed (by Virtue of the Process of this Court) to the Custody of any Sheriff, or other Officer whatsoever, at the Suit of any Plaintiff, and shall so remain in Custody two Terms, and the Plaintiff shall not declare against such Defendant in that Time; then such Defendant, after the End of the second Term after such Imprisonment, shall be discharged out of the Prison, in which he was so detained, upon filing common Bail to be signed by one of the Judges of this Court, without giving Notice to the Plaintiff or his Attorney. And if any Plaintiff shall declare against such Defendant, a Prisoner in Custody of the Marshal of this Court, or any Sheriff, or other Officer, and shall not proceed to Trial or Judgment within three Terms next after such Declaration delivered,

livered ; or if any Plaintiff shall obtain Judgment in this Court in any Action against such Defendant remaining in Prison, and shall not charge him in Execution upon Judgment so obtained within two Terms next after such Judgment so had and obtained, then such Defendant so remaining in Prison may file Bail, or prosecute a Writ of *Supersedeas* out of this Court for his Discharge out of Custody, to be allowed by one of the Judges of this Court, if the Plaintiff, or his Attorney, on Notice to one of them given by the Defendant's Attorney, (and Affidavit made of such Notice) shall not appear before the said Justice, and shew Cause against filing Bail, or obtaining such Writ of *Supersedeas*.

By the Court.

The following Notice was stuck up in the *King's Bench* Office, in *Michaelmas* Term, in the Sixth Year of his present Majesty King *George* the Second.

Notice

*A Warning to
Sheriffs.*

Notice is hereby given to all Sheriffs and Under Sheriffs, That upon being served with a Rule, peremptorily to return any Writ, issuing out of this Court, or to bring in the Body of any Defendant within six Days after Notice, if the same be not done within the said Time, they will be liable to an Attachment, without a further Rule, as heretofore.

ORDERS to be observed by Commissioners impowred by Commission, in pursuance of an Act of Parliament for taking special Bails in the Country upon Actions and Suits depending or to be depending in their Majesties Court of Common-Pleas at Westminster.

FIRST, It is ordered, That before any Bail be taken by virtue of the said Act a true Copy of the Writ on Parchment, to which the Defendant is to put in Bail, shall be brought to the Commissioner before whom such Bail is to be taken; and thereupon the Recognizance or Bail-Piece shall be fairly drawn

English Tutor.

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drawn and ingrossed on the said Parchment Copy in this or the like Form, as the Case shall be; to wit,

Bail, *John Denn of Black Barnesly*
in the Parish of *Settle*, in the
County of *York*, Gentleman;
and
Richard Fenn of the same
Place, Gentleman.

The Party himself in Twenty Pounds.
Each of the Bail in Ten Pounds.

A.B. Attorney for the Defendant.

Taken and acknowledged the — Day
of —, before me,
C.D. Commissioner.

If the Defendant be not present, then the Bail are usually bound in double the Sum in the Writ; otherwise only single.

The Condition of which said Recognizance shall be to this Effect:

You (*naming the Defendant if present*) do acknowledge to owe unto the Plaintiff twenty Pounds; and You (*naming the Bail*) do severally acknowledge to owe unto the same Person the Sum of ten Pounds apeice, to be levied

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levied upon your several Goods and Chattels, Lands and Tenements, upon condition that if the Defendant be condemned in the said Action, he shall pay the Condemnation, or render himself a Prisoner to the *Fleet* for the same: And if he fail so to do, you (*naming the Bail*) do undertake to do it for him.

Secondly, It is ordered, That the Affidavit of the due taking of every such Bail shall be made either before some Judge of the *Common-Pleas*, to whom the Bail shall be transmitted; or before some Person who shall have Power to take Affidavits in Matters and Causes depending in the said Court.

Thirdly, It is ordered, That all Bails taken by any Commissioner within the Distance of forty Miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of the Court of *Common Pleas*, or to one of the Justices of the said Court, within ten Days after the taking thereof; and all Bails taken by any Commissioner above the Distance of forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted within twenty Days after the taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any of them shall be returned to *London* out of his Circuit.

Fourthly,

Fourthly, Also every Commissioner is to have a Book kept purposely for entering exactly the Names of the Defendant, and his Bail, and of the Plaintiff as it is in the Bail-Piece; and the Time of the taking thereof, and the Name of him by whom such Bail shall be transmitted.

Fifthly, It is further ordered, that the Plaintiff's Attorney shall be at liberty to repair to the Commissioner's Book for the Names of the Bail, to the end that they may enquire of the Sufficiency of them; and if they are found insufficient, they may except against them within twenty Days after the said Bail is transmitted, and Notice to the Plaintiff or his Attorney of the taking thereof: And in that case the Defendant must either put in better Bail, or the Cognisors of such Bail must justify themselves in open Court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court.

Geo. Treby.

Ed. Newill.

John Powell.

Tho. Rokeby.

Rules

RULES to be observed in the Court of Common-Pleas in the Proceedings upon Declarations delivered to Prisoners in Custody in County Goals.

FIRST, That no Copy of any Declaration shall be delivered to a Prisoner in Custody until after the Process upon which such Prisoner shall be taken or charged in Custody be returnable.

Secondly, That no Rule shall be given for the Defendant in Custody to appear and plead to any Declaration against him, until an Affidavit be filed with the proper Secondary of the Delivery of a Copy of such Declaration, and of the Time when and the Person to whom the same Copy was delivered; and the Copy of the said Affidavit shall be produced to the Prothonotary before Judgment signed, together with a Certificate from the proper Officer, that no Appearance is entered with him.

Thirdly, If a Copy of the Declaration be delivered before *Mensem Pasche* or *Craftinum Animarum*, and Affidavit thereof made and filed, and the Defendant

dant doth not enter his Appearance with the proper Officer within ten Days after *Easter* or *Trinity* Terms respectively, Judgment may be entered against him upon the Certificate, as aforesaid, if Rules have been given ; but if he doth enter his Appearance, as aforesaid, before the End of ten Days after the Term, he shall imparl until the next Term, unless the Action be in *London* or *Middlesex*, and the Defendant be in Prison within forty Miles of the City of *London* and *Westminster*, then though he doth appear before the Expiration of ten Days after the End of the Term, he shall plead two Days before the *Essoin* Day of the next Term ; and in Default thereof Rules having been given, Judgment may be entered against him, as aforesaid.

Fourthly, If a Copy of the Declaration be delivered on or after *Mensem Pasche* in *Easter* Term, or *Craftinum Animarum* in *Michaelmas* Term, or in *Hillary* or *Trinity* Term, and the Plaintiff thereupon shall give Rules to appear and plead, if the Defendant enters his Appearance two Days preceeding the *Essoin*-Day of the next Term he shall imparl until the said next Term : But if he does not appear within that

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Time Judgment may be entered against him, as aforesaid.

Fifthly, If the Writ be returnable in one Term, and a Copy of the Declaration be delivered before the Effoin-Day of the next Term, the Plaintiff in such next Term may give Rules to appear and plead; and if the Defendant doth not enter his Appearance, and plead by that time the Rules are out, Judgment may be entered against him, as aforesaid.

Sixthly, If the Declaration be not entered or left in the Office before the End of the next Term after the Writ or Process (by which the Prisoner shall be taken or charged in Custody) be returnable, and an Affidavit made and filed in Manner aforesaid, before the End of twenty Days after such Term, (*Easter* Term excepted,) and within ten Days after *Easter* Term the Prisoner shall be discharged upon the entering of his Appearance with the proper Officer by Writ of *Supersedeas* made by him, according to the antient Practice of this Court.

Seventhly, If any Goaler or Keeper of a Prison having received a Copy of a Declaration against any Prisoner in his Custody;

Custody, shall suppress the same, or not deliver it forthwith to such Prisoner, an Attachment shall be issued out against him.

Geo. Treby.

Ed. Nevill.

Job Powell.

Tho. Rokeby.

RULES to be observed for discharging Prisoners committed to the Fleet Prison, County and other Goals, and for discharging Persons rendering themselves or being rendered to the Fleet Prison, in discharge of their Bail (by virtue of Process of the Court, by Superfedeas for want of Prosecution.

IT is ordered, That if any Plaintiff shall declare against any Defendant in Custody of the Warden of the *Fleet*, or of any Sheriff or other Officer, by Virtue of any Process of this Court, and shall not farther proceed to Judgment within three Terms after such Declaration delivered, inclusive of the Term in which the Declaration shall be delivered, the Defendant having appeared.

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Or if any Plaintiff having obtained Judgment in this Court in any Action against any Defendant a Prisoner as aforesaid, and shall not charge such Defendant so remaining a Prisoner in Execution upon the Judgment so obtained, within two Terms next after such Judgment so had and obtained, including the Term in which the said Judgment shall be signed: then such Defendant so remaining in Prison may be discharged out of Custody, where he shall be so detained, by *Supersedeas* to be allowed by one of the Justices of this Court, if Cause shall not be shewn by the Plaintiff or his Attorney, why such Plaintiff had not proceeded before that time to Judgment and Execution as aforesaid, upon Notice to either of them given by the Defendant's Attorney or Agent, and Oath made of such Notice given.

And if any Defendant shall render himself or herself to be rendered to the *Fleet* Prison in discharge of his or her Bail, at the Suit of any Plaintiff, where no further Proceedings by Declaration has been had against such Defendant so rendered before such Render, unless the Plaintiff shall declare against such Defendant within two Terms after such Render; and where
any

any Declaration hath been delivered against such Persons so rendering themselves, or Judgment hath been had against him or her before such Render, unless the Plaintiff shall proceed to Judgment upon such Declaration delivered within three Terms after such Render, (the Defendant having appeared,) and charge such Defendant in Execution within two Terms after such Judgment obtained; such Defendant may be discharged out of Custody by *Supersedeas* to be allowed by one of the Justices of this Court, if Cause shall not be shewn to the contrary, as aforesaid, by the Plaintiff or his Attorney, upon Notice to either of them given by the Defendant's Attorney or Agent, and Oath made of such Notice.

P. King.

R. Tracy.

Jo. Blencoe.

R. Dormer,

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The Opinion of the Twelve Judges upon the Clause in the Act of 22. and 23. of King Charles the Second, cap. 9. for giving no more Costs than Damages; delivered at Serjeant's Inn in Chancery Lane, London, in Trinity Term, in the twenty third Year of the said King.

The Clause in the Act.

“ **A**ND for Prevention of trivial
 “ and vexatious Suits in Law,
 “ whereby many good Subjects of this
 “ Realm have been and are daily un-
 “ done, contrary to the Intention of an
 “ Act made in the 43d Year of Queen
 “ *Elizabeth*, for avoiding of infinite
 “ Numbers of small and trivial Suits
 “ commenced in the Courts at *Westmin-*
 “ *ster*; Be it farther Enacted for the
 “ making the said Law effectual, That
 “ from and after the first of *May* afore-
 “ said, in all Actions of Trespass, Af-
 “ fault and Battery, and other Personal
 “ Actions, wherein the Judge at the
 “ Trial of the Cause shall not find and
 “ certify under his Hand upon the Back
 “ of the Record, That an Assault and
 “ Battery was sufficiently proved by
 “ the Plaintiff against the Defendant,
 or

“ or that the Freehold or Title of
 “ the Land mentioned in the Plaintiff’s
 “ Declaration was chiefly in Question;
 “ the Plaintiff in such Action, in case
 “ the Jury shall find the Damages to
 “ be under the Value of forty Shillings,
 “ shall not recover or obtain more Costs
 “ of Suit than the Damages so found
 “ shall amount unto. And if any more
 “ Costs in any such Action shall be a-
 “ warded, the Judgment shall be void,
 “ and the Defendant is hereby acquitted
 “ of and from the same, and may have
 “ his Action against the Plaintiff for
 “ such vexatious Suits, and recover his
 “ Damages and Costs of such his Suit
 “ in any of the said Courts of Record.”

The Judges Opinion.

1. That Actions of Debt are not within this Clause.

2. That no Action upon the Case, *Sur assumpsit*, Account, or other Personal Actions (other than for Assault and Battery, or voluntary Trespass, where the Title comes not, nor cannot come in question) is within this Clause.

3. That the Judge is bound to certify on Actions of Assault and Battery, where the Jury shall find Damages to ten Shillings or less, That the Battery is

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sufficiently proved; otherwise the Plaintiff is to have no more Costs than Damages.

4. That if the Defendant pleads, *Son Assault Demesne*, and the Jury find it, *Ad Damnum Querentis*, the Certificate must be, that the Jury find by the Defendant's Plea, that the Battery is admitted and sufficiently proved.

5. That if an Assault be proved, and no Battery, there needs no Certificate.

6. That in case of a Certificate, where it is requisite it must be endorsed on the Pannel or *Nomina Juratorum*, with the Judge's Hand to it immediately after the Trial, and the Certificate is to be, That the Battery is fully proved.

7. That the Clause extends only where Damages are only to be recovered, and not in Debt, because Debt is not within the Words; (although the Debt be under Forty Shillings, it is all one, it needs no Certificate.)

8. That in all Actions for a Common, a Way, a Nuisance, Lights, Water-Courses, &c. the Judges may certify, because the Freehold may come in question, although it be not mentioned in the Declaration.

9. That

9. That the Clause extends not to Judgments by Default, or Writs of Inquiry of Damages.

Matthew Hale.

Jo. Archer.

Tho. Twysden.

Will. Wylde.

Ri. Raynsford.

Edw. Turner.

Will. Moreton.

Hugh Wyndham.

Jo. Vaughan.

Chr. Turner.

Tho. Tyrrill.

T. Littleton.



A TABLE,

Shewing the Beginning of every King's Reign, from WILLIAM the Conqueror to this present Time; together with the Year of *Christ* answering thereto: Being very useful to find the Year of our Lord, and the King or Queen's Reign agreeing therewith.

WILLIAM I. Began his Reign Oct. 14. 1066.	
An. Dom.	An. Reg.
1067	1
1068	2
1069	3
1070	4
1071	5
1072	6
1073	7
1074	8
1075	9
1076	10
1077	11
1078	12
1079	13
1080	14
1081	15
1082	16
1083	17
1084	18
1085	19
1086	20

WILLIAM II. Sept. 9. 1087.	
An. Dom.	An. Reg.
1087	
1088	1
1089	2
1090	3
1091	4
1092	5
1093	6
1094	7
1095	8
1096	9
1097	10
1098	11
1099	12

HENRY I. Aug. 1. 1100.	
An. Dom.	An. Reg.
1100	
1101	1
1102	2
1103	3

A T A B L E.

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HENRY I.

An. Dom.	An. Reg.
1104	4
1105	5
1106	6
1107	7
1108	8
1109	9
1110	10
1111	11
1112	12
1113	13
1114	14
1115	15
1116	16
1117	17
1118	18
1119	19
1120	20
1121	21
1122	22
1123	23
1124	24
1125	25
1126	26
1127	27
1128	28
1129	29
1130	30
1131	31
1132	32
1133	33
1134	34
1135	35

STEPHEN.

Dec. 2. 1135.

An. Dom.	An. Reg.
1136	1
1137	2
1138	3
1139	4
1140	5
1141	6
1142	7
1143	8
1144	9
1145	10
1146	11
1147	12
1148	13
1149	14
1150	15
1151	16
1152	17
1153	18

HENRY II.

Oct. 25. 1154.

An. Dom.	An. Reg.
1154	
1155	1
1156	2
1157	3
1158	4
1159	5
1160	6
1161	7
1162	8
1163	9
1164	10
1165	11

A TABLE.

HENRY II.

An. Dom.	An. Reg.
1166	12
1167	13
1168	14
1169	15
1170	16
1171	17
1172	18
1173	19
1174	20
1175	21
1176	22
1177	23
1178	24
1179	25
1180	26
1181	27
1182	28
1183	29
1184	30
1185	31
1186	32
1187	33
1188	34

RICHARD I.

July 9. 1189.

1189	
1190	1
1191	2
1192	3
1193	4
1194	5
1195	6
1196	7

RICHARD I.

An. Dom.	An. Reg.
1197	8
1198	9

JOHN.

Apr. 6. 1199.

1199	
1200	1
1201	2
1202	3
1203	4
1204	5
1205	6
1206	7
1207	8
1208	9
1209	10
1210	11
1211	12
1212	13
1213	14
1214	15
1215	16
1216	17

HENRY III.

Oct. 19. 1216.

1217	1
1218	2
1219	3
1220	4
1221	5
1222	6
1223	7

A TABLE.

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HENRY III.

An. Dom. An. Reg.

1224	8
1225	9
1226	10
1227	11
1228	12
1229	13
1230	14
1231	15
1232	16
1233	17
1234	18
1235	19
1236	20
1237	21
1238	22
1239	23
1240	24
1241	25
1242	26
1243	27
1244	28
1245	29
1246	30
1247	31
1248	32
1249	33
1250	34
1251	35
1252	36
1253	37
1254	38
1255	39
1256	40
1257	41
1258	42

HENRY III.

An. Dom. An. Reg.

1259	43
1260	44
1261	45
1262	46
1263	47
1264	48
1265	49
1266	50
1267	51
1268	52
1269	53
1270	54
1271	55
1272	56

EDWARD I.

Nov. 16. 1272.

1273	1
1274	2
1275	3
1276	4
1277	5
1278	6
1279	7
1280	8
1281	9
1282	10
1283	11
1284	12
1285	13
1286	14
1287	15
1288	16
1289	17

A TABLE.

EDWARD I.

An. Dom.	An. Reg.
1290	18
1291	19
1292	20
1293	21
1294	22
1295	23
1296	24
1297	25
1298	26
1299	27
1300	28
1301	29
1302	30
1303	31
1304	32
1305	33
1306	34

EDWARD II.

July 7. 1307.

1307	
1308	1
1309	2
1310	3
1311	4
1312	5
1313	6
1314	7
1315	8
1316	9
1317	10
1318	11
1319	12
1320	13

EDWARD II,

An. Dom.	An. Reg.
1321	14
1322	15
1323	16
1324	17
1325	18
1326	19

EDWARD III.

Jan. 25. 1326.

1327	1
1328	2
1329	3
1330	4
1331	5
1332	6
1333	7
1334	8
1335	9
1336	10
1337	11
1338	12
1339	13
1340	14
1341	15
1342	16
1343	17
1344	18
1345	19
1346	20
1347	21
1348	22
1349	23
1350	24
1351	25

A TABLE.

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EDWARD III.

An. Dom.	An. Reg.
1352	26
1353	27
1354	28
1355	29
1356	30
1357	31
1358	32
1359	33
1360	34
1361	35
1362	36
1363	37
1364	38
1365	39
1366	40
1367	41
1368	42
1369	43
1370	44
1371	45
1372	46
1373	47
1374	48
1375	49
1376	50

RICHARD II.

June 2. 1377.

1377	
1378	1
1379	2
1380	3
1381	4
1382	5

RICHARD II.

An. Dom.	An. Reg.
1383	6
1384	7
1385	8
1386	9
1387	10
1388	11
1389	12
1390	13
1391	14
1392	15
1393	16
1394	17
1395	18
1396	19
1397	20
1398	21
1399	22

HENRY IV.

Sept. 29. 1399.

1400	1
1401	2
1402	3
1403	4
1404	5
1405	6
1406	7
1407	8
1408	9
1409	10
1410	11
1411	12
1412	13

A TABLE.

HENRY V.

March 20. 1412.

An. Dom.	An. Reg.
1413	1
1414	2
1415	3
1416	4
1417	5
1418	6
1419	7
1420	8
1421	9

HENRY VI.

Aug. 31. 1422.

1422	
1423	1
1424	2
1425	3
1426	4
1427	5
1428	6
1429	7
1430	8
1431	9
1432	10
1433	11
1434	12
1435	13
1436	14
1437	15
1438	16
1439	17
1440	18
1441	19
1442	20

HENRY VI.

An. Dom. An. Reg.

1443	21
1444	22
1445	23
1446	24
1447	25
1448	26
1449	27
1450	28
1451	29
1452	30
1453	31
1454	32
1455	33
1456	34
1457	35
1458	36
1459	37
1460	38

EDWARD IV.

March 4. 1460.

1461	1
1462	2
1463	3
1464	4
1465	5
1466	6
1467	7
1468	8
1469	9
1470	10
1471	11
1472	12
1473	13

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EDWARD IV.

An. Dom.	An. Reg.
1474	14
1475	15
1476	16
1477	17
1478	18
1479	19
1480	20
1481	21
1482	22

ED. 5. and RICH. 3.

Apr. 9. 1483.

1483	
1484	1
1485	2

HENRY VII. Aug. 22. 1486.

1486	
1487	1
1488	2
1489	3
1490	4
1491	5
1492	6
1493	7
1494	8
1495	9
1496	10
1497	11
1498	12
1499	13
1500	14
1501	15

HENRY VII.

An. Dom.	An. Reg.
1502	16
1503	17
1504	18
1505	19
1506	20
1507	21
1508	22

HENRY VIII.

Apr. 22. 1509.

1509	
1510	1
1511	2
1512	3
1513	4
1514	5
1515	6
1516	7
1517	8
1518	9
1519	10
1520	11
1521	12
1522	13
1523	14
1524	15
1525	16
1526	17
1527	18
1528	19
1529	20
1530	21
1531	22
1532	23

A TABLE.

HENRY VIII.

An. Dom. | An. Reg.

1533	24
1534	25
1535	26
1536	27
1537	28
1538	29
1539	30
1540	31
1541	32
1542	33
1543	34
1544	35
1545	36
1546	37

EDWARD VI.

Jan. 28. 1546.

1547	1
1548	2
1549	3
1550	4
1551	5
1552	6

MARY.

July 6. 1553.

1553	1
1554	2
1555	3
1556	4
1557	5
1558	6

ELIZABETH.

Nov. 17. 1558.

An. Dom. | An. Reg.

1559	1
1560	2
1561	3
1562	4
1563	5
1564	6
1565	7
1566	8
1567	9
1568	10
1569	11
1570	12
1571	13
1572	14
1573	15
1574	16
1575	17
1576	18
1577	19
1578	20
1579	21
1580	22
1581	23
1582	24
1583	25
1584	26
1585	27
1586	28
1587	29
1588	30
1589	31
1590	32
1591	33

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ELIZABETH.

An. Dom.	An. Reg.
1592	34
1593	35
1594	36
1595	37
1596	38
1597	39
1598	40
1599	41
1600	42
1601	43
1602	44

JAMES I.

Mar. 24. 1602.

1603	1
1604	2
1605	3
1606	4
1607	5
1608	6
1609	7
1610	8
1611	9
1612	10
1613	11
1614	12
1615	13
1616	14
1617	15
1618	16
1619	17
1620	18
1621	19
1622	20
1623	21
1624	22

CHARLES I.

Mar. 27. 1625.

An. Dom.	An. Reg.
1625	1
1626	2
1627	3
1628	4
1629	5
1630	6
1631	7
1632	8
1633	9
1634	10
1635	11
1636	12
1637	13
1638	14
1639	15
1640	16
1641	17
1642	18
1643	19
1644	20
1645	21
1646	22
1647	23
1648	24

CHARLES II.

Jan. 30. 1649.

1649	1
1650	2
1651	3
1652	4
1653	5
1654	6

A TABLE.

CHARLES II.

An. Dom.	An. Reg.
1655.	7
1656	8
1657	9
1658	10
1659	11
1660	12
1661	13
1662	14
1663	15
1664	16
1665	17
1666	18
1667	19
1668	20
1669	21
1670	22
1671	23
1672	24
1673	25
1674	26
1675	27
1676	28
1677	29
1678	30
1679	31
1680	32
1681	33
1682	34
1683	35
1684	36

JAMES II.

Feb. 6. 1684.

An. Dom.	An. Reg.
1685	1
1686	2
1687	3
1688	4

WILL. and MARY.

Feb. 13. 1688.

1689	1
1690	2
1691	3
1692	4
1693	5
1694	6

WILLIAM III.
(alone.)

1695	1
1696	2
1697	3
1698	4
1699	5
1700	6
1701	7

ANNE.

Mar. 8. 1702.

1702	1
1703	2
1704	3
1705	4
1706	5
1707	6

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ANNE.

An. Dom.	An. Reg.
1708	7
1709	8
1710	9
1711	10
1712	11
1713	12
1714	13

GEORGE I.

Aug. 1. 1714.

1715	1
1716	2
1717	3
1718	4
1719	5
1720	6
1721	7
1722	8
1723	9
1724	10
1725	11
1726	12
1727	13

GEORGE II.

June 11. 1727.

1728	1
1729	2
1730	3
1731	4
1732	5
1733	6
1734	7

An. Dom. An. Reg.

1735	8
1736	9
1737	10
1738	11
1739	12
1740	13
1741	14
1742	15
1743	16
1744	17
1745	18
1746	19
1747	20
1748	21
1749	22
1750	23
1751	
1752	
1753	
1754	
1755	
1756	
1757	
1758	
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1769	
1770	

Aa 3

Of Priviledge of Parliament.

The Priviledge of Parliament, in regard to Creditors, was, in a very great Measure, honourably given up by the Parliament themselves in and by the Statute of the Twelfth of William the Third, Chap. 3. Entitled, An Act for preventing any Inconveniencies that may happen by Priviledge of Parliament; the Abstract whereof is as follows.

STAT. 12th Wm. III. Cap. 3. after the 24th of June, 1701, Actions may be prosecuted in his Majesty's Courts of Record at *Westminster*, High Courts of *Chancery, Exchequer, Dutchy, Admiralty*; and in Causes Matrimonial and Testamentary, in the *Arches, Prerogatives of Canterbury and York, Delegates*, and Courts of *Appeal*, against any Person entitled to Priviledge of Parliament, immediately after Dissolution or Prorogation, until a new Parliament, or the same re-assembled, and immediately after Adjournment of both Houses for above fourteen Days, until re-assumed. The said Court, during such Time, to proceed to give Judgment, make final Orders, &c.

Proviso,

Proviso, Not to subject the House of Commons, or any entitled to Priviledge of Parliament, to Arrests during Priviledge.

But Persons having Cause of Action against Lords. of Parliament, during such Time as aforesaid, may have such Process out of the *King's Bench*, *Common Pleas*, and *Exchequer*, as they might out of Time of Priviledge, and may have Process against any of the House of Commons, or other Person entitled to Priviledge of Parliament, during the Time aforesaid, out of the same Courts, by Summons, by Distress infinite, or by Original Bill, Summons, Attachment, and Distress infinite, which the said Courts are hereby impower'd to issue against them, 'till they appear, or file common Bail. Persons exhibiting Bills (against any entitled to Priviledge of Parliament) in the *Chancery*, *Exchequer*, or *Dutchy*, may proceed, upon leaving a Copy of the Bill with the Defendant (or at his House, Lodging, or last Place of Abode) and for want of Appearance, or Answer, or for Non-performance, or Breach of Order, or Decree, may sequester the Estate of the Party, as is used where the Defendant is a Peer; but not arrest the Body of

A a 4

any

Priviledge of Parliament.

any Knight, Citizen, and Burgeſs, or other priviledged Perſon, during Continuance of Priviledge.

The Plaintiff, ſtaid by Priviledge of Parliament, ſhall not be barred by the Statute of Limitations, Nonſuited, Diſmiſſed, nor have his Suit diſcontinued for want of Proſecution, but ſhall, upon the riſing of the Parliament, be at Liberty to proceed to Judgment and Execution.

No Proceeding in Law or Equity againſt the King's Original and immediate Debtor, for a Duty originally and immediately due, or againſt the King's Accountant for any Part of his Revenue, or other Original, and immediate Debt, ſhall be impeach'd or delay'd under Pretence of Priviledge of Parliament. Nevertheless, ſuch Debtor or Accountant, being a Lord of Parliament, ſhall not be arreſted upon ſuch Proceedings, or being a Member of the Houſe of Commons, ſhall not, during the Continuance of the Priviledge of Parliament, be arreſted upon ſuch Proceſs.

Proviſo, That this Act ſhall not give Jurisdiction to any Court to hold Plea in any real or mix'd Action, in other Manner than ſuch Court might have done before.

This

This Act was further explained by another Act of Parliament, in the second Year of Queen *Anne*, Entitled, *An Act for the further Explanation and Regulation of Parliament, in relation to Persons in publick Offices*, which Abstract likewise take as follows.

Stat. 2. *A.* Cap. 18. Any Action or Suit may be prosecuted in her Majesties Courts at *Westminster*, against any Officer of the Revenue, or other Officer of publick Trust, for any Forfeiture, Misdemeanor, or Breach of Trust relating to such Office or Trust; and no such Suit or Execution thereupon, tho' such Officer be Peer, Lord of Parliament, Knight, Citizen or Burgefs of the House of Commons, or otherwise entitled to Priviledge of Parliament, shall be staid by Colour of such Priviledge.

Nothing herein shall subject the Person of such Officer, being a Peer or Lord of Parliament, to be arrested, but such Process shall issue out against such Officer or Person, being a Peer, as should have issued against him out of the Time of Priviledge.

Nor shall subject the Person of a Knight, Citizen or Burgefs of the House of Commons to be arrested during the Time of Priviledge, but Summons, Distress infinite, or Original Bill, Summons, Attachment and Distress infinite,

Priviledge of Parliament.

finite, shall be issued, which the said Courts are impowered to issue until the Party shall appear.

Note, The Parliament is not dissolved by a Demise of the Crown, but if sitting may act for six Months, and if not sitting, must meet on the Day 'tis prorogued to, and may act for six Months, unless sooner prorogued or dissolved, and this by the Statute of 6 A. C. 7.

Sir *Edward Coke* acquaints us, That the Parliament is the highest and most honourable and absolute Court of Justice in *England*, consisting of the King, the Lords of Parliament, and the Commons; and adds, (by way of Conjecture) that it is called Parliament, because every Member of that Court should sincerely and discreetly *Parlez la Ment*, speak his Mind for the general Good of the Commonwealth. 1 *Inst.* 109, 110.

Observe, at the Return of the Writs for the Election of the Members, the Parliament cannot begin unless his Majesty is present in Person, or by Representation by Letters Patent, or Commission.

Every Act must have the Consent of the Lords and Commons, but it is properly

perly the Act of the King, as appears by the Preambles of antient Statutes.

The King need not be present at the passing Acts of Parliament, it being declared by 33 *H. 8. C. 21.* That he may pass them by Commission under the Great Seal, signed by his Hand, and that such Acts ever were of equal Force with those passed by the King in Person.

The Lords and Commons, in the respective Houses, have a Power of Judicature, and so have both Houses together.

The House of Lords is a distinct Court to several Purposes: They try criminal Causes on an Impeachment of the Commons, and have an Original Jurisdiction for the Trial of Peers, upon Indictments found by a Grand Jury. They also determine Causes upon Appeals from the Court of *Chancery*, or upon Writs of Error, to reverse Judgments.

The House of Commons is also a distinct Court to many Purposes: They examine the Right of Elections, expel their own Members, and commit them to Prison, and sometimes other Persons; but how far their Authority extends in this Matter, is not yet determined. 4 *Inst. 21, 22, 23, &c.*

If a Lord be absent from the House, he may make his Proxy, but a Member of the Commons cannot.

Priviledge of Parliament.

A Member of Parliament shall have the Priviledge of Parliament, not only for himself and his Servants, to be freed from Arrests, Subpœna, Citations, &c. but for his Horses and Goods to be free from Distresses; but for Treason, Felony, and Breach of the Peace, there can be no Priviledge. 4 *Inst.* 24, 25.

Every Session of Parliament is deem'd in Law a several Parliament; and by the Prorogation, such Bills as have passed either or both Houses, not having received the Royal *Fiat*, must fall. An Adjournment does not make a Session, but all Things continue in the State they were before the Adjournment. An Adjournment may be by the respective Houses, but a Prorogation is commanded by the Prince: These are the principal Distinctions between Adjournments and Prorogations. The House of Commons is not prorogued or adjourned by the Prorogation or Adjournment of the Peers. 4 *Inst.* 28.

When a Parliament is dissolved without any Act or Judgment, it is said to be no Sessions, but a Convention.

Every Man in Judgment of Law, is Party to an Act of Parliament; all Acts relate to the first Day of the Session of Parliament in which they were

were made, if it be not otherwise provided by the Act. 4 *Inst.* 25, 27.

The Courts of Justice must take Notice of general or publick Acts, tho' they are not pleaded, but not of particular or private Acts, without pleading. 1 *Inst.* 98.

The Preamble or Rehearfal of a Statute is deemed true, and therefore good Arguments may be drawn from the Preamble. 1 *Inst.* 11.

Where a Clause of an Act mentions only inferior Persons or Things, it shall not be extended by general Words to those of a superior Order. 2 *Rep.* 46.

Old Statutes must give Place to new, where they are contrary; but an Affirmative Act does not repeal a Precedent affirmative Act; and Acts of Parliament against the Power of subsequent Parliaments are not binding, notwithstanding the Statute of 42 *Ed. III.* Cap. 3. which declares, That any Statute made against *Magna Charta*, or the Charter of the Forest, shall be void: And this is evident, seeing many Parts of *Magna Charta* have been repeal'd and alter'd by subsequent Acts.

By repealing of a Repealing Statute, the first Statute is revived.

In passing Bills of Attainder, it has been held, That neither Articles,
Charge,

Priviledge of Parliament.

Charge, or Evidence are necessary, but private Satisfaction to every Man's Conscience is sufficient. *State Trials*, Vol. I. 677.

Orders of Parliament determine at the Session. *Ib.* 634.

A Subject of *England*, residing in *Ireland*, or in any other Country, Parcel of the Dominions of this Crown, cannot plead to the Jurisdiction of the Parliament of *England*. *Ib.* 353.

The Courts at *Westminster* may judge of the Priviledge of Parliament, where it is incident to a Suit the Court is possess'd of, but not of Matters arising originally in Parliament. *State Trials*, Vol. II. 66.

Appeals, Writs of Errors, and Impeachments, remain in the same State, on calling a new Parliament, they were in at the Dissolution of the old.

But inferior Courts may proceed to Execution between the Sessions, notwithstanding Appeals, or Writs of Error lodged in the House of Peers. *State Trials*, Vol. II. 209.

The Parliament, in their judicial Capacity, are govern'd by the Common and Statute Laws, as well as the Courts in *Westminster Hall*. *State Trials*, Vol. II, 735, Vol. IV, 311.

Acts

Acts of Parliament do not bind the King, except he is specially named, or unless they concern the Commonwealth, suppress Wrong, take away Fraud, or prevent the Decay of Religion. The common Words, *No Person, or Persons, Bodies Politick, or Corporate*, do bind him, tho' the Statute is in the Negative. But he may take Benefit of any Act, tho' he is not named. 2 *Inst.* 681. 7 *Rep.* 32.

For commencing of Suits against Peers of the Realm, or Members of the House of Commons. See *Privilegia Parliamentaria, Senatus Consensu Sublata.*

A
T A B L E
OF THE
C O N T E N T S
To the Second
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